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## Legislative History – Montana Session Law

Chapter: 294 Session L: 2015
Bill Number: SB 262

**Checklist of Bill History**

| | |
|---|---|
| History and Final Status Sheet | ☑ |
| Introduced Bill | ☐ |
| Fiscal Note | ☐ |
| Third Reading Bill | ☐ |
| Final Version of Bill | ☑ |

| **House** | **Senate** |
|---|---|
| Committee: Judiciary | Committee: Judiciary & Finance & Claims |
| Hearing Date(s): 4/11/2015 | Hearing Date(s): 2/16/2015 (J)<br>2/24/2015 (F&C) |
| Committee Report: 4/13/2015 | Committee Report: 2/20/2015 |

**Conference Committee**

Hearing Date(s):

Conference Committee Report:

**Compiler Notes**

Compiled by: SK Marshall

Date: 7/29/2024

Notes:

# Exported Data

| Date | Action | Committee | Votes (Yes) | Votes (No) | Media |
|---|---|---|---|---|---|
| 04/24/15 | Chapter Number Assigned | | | | |
| 04/24/15 | (S) Signed by Governor | | | | |
| 04/23/15 | (S) Transmitted to Governor | | | | |
| 04/23/15 | (H) Signed by Speaker | | | | |
| 04/22/15 | (S) Signed by President | | | | |
| 04/20/15 | (S) Returned from Enrolling | | | | |
| 04/20/15 | (C) Printed - Enrolled Version Available | | | | |
| 04/18/15 | (S) Sent to Enrolling | | | | |
| 04/17/15 | (H) Returned to Senate | | | | |
| 04/16/15 | (H) 3rd Reading Concurred | | 53 | 47 | |
| 04/16/15 | (H) Scheduled for 3rd Reading | | | | |
| 04/16/15 | (C) Sponsors Engrossed | | | | |
| 04/16/15 | (C) Printed - New Version Available | | | | |
| 04/15/15 | (H) Motion Failed | | 40 | 55 | |
| 04/15/15 | (H) 2nd Reading Concurred | | 53 | 47 | |
| 04/15/15 | (H) 2nd Reading Motion to Amend Failed | | 47 | 53 | |
| 04/15/15 | (H) 2nd Reading Motion to Amend Failed | | 47 | 53 | |
| 04/15/15 | (H) 2nd Reading Motion to Amend Failed | | 46 | 54 | |
| 04/15/15 | (H) 2nd Reading Motion to Amend Failed | | 49 | 51 | |
| 04/15/15 | (H) 2nd Reading Motion to Amend Failed | | 46 | 54 | |
| 04/15/15 | (H) 2nd Reading Motion to Amend Failed | | 46 | 54 | |
| 04/15/15 | (H) 2nd Reading Motion to Amend Failed | | 47 | 53 | |
| 04/15/15 | (H) 2nd Reading Motion to Amend Failed | | 47 | 53 | |
| 04/15/15 | (H) 2nd Reading Motion to Amend Failed | | 47 | 53 | |
| 04/15/15 | (H) 2nd Reading Motion to Amend Failed | | 47 | 53 | |
| 04/15/15 | (H) 2nd Reading Motion to Amend Failed | | 47 | 53 | |
| 04/15/15 | (H) 2nd Reading Motion to Amend Failed | | 46 | 54 | |
| 04/15/15 | (H) 2nd Reading Motion to Amend Failed | | 48 | 52 | |
| 04/15/15 | (H) Scheduled for 2nd Reading | | | | |
| 04/14/15 | (H) Taken from Committee; Placed on 2nd Reading | (H) Judiciary | 52 | 48 | |
| 04/13/15 | (H) Committee Report--Bill Not Concurred as Amended | (H) Judiciary | | | |
| 04/13/15 | (H) Committee Executive Action--Bill Not Concurred as Amended | (H) Judiciary | 11 | 10 | |

| Date | Action | Committee | Votes (Yes) | Votes (No) | Media |
|---|---|---|---|---|---|
| 04/11/15 | (H) Hearing | (H) Judiciary | | | |
| 03/05/15 | (H) First Reading | | | | |
| 03/05/15 | (H) Referred to Committee | (H) Judiciary | | | |
| 02/26/15 | (S) Transmitted to House | | | | |
| 02/26/15 | (S) 3rd Reading Passed | | 31 | 19 | |
| 02/26/15 | (S) Scheduled for 3rd Reading | | | | |
| 02/25/15 | (S) 2nd Reading Passed | | 31 | 19 | |
| 02/25/15 | (S) 2nd Reading Motion to Amend Failed | | 15 | 35 | |
| 02/25/15 | (S) 2nd Reading Motion to Amend Failed | | 14 | 36 | |
| 02/25/15 | (S) 2nd Reading Motion to Amend Failed | | 15 | 35 | |
| 02/25/15 | (S) Scheduled for 2nd Reading | | | | |
| 02/24/15 | (S) Taken from Committee; Placed on 2nd Reading | (S) Finance and Claims | 33 | 17 | |
| 02/24/15 | (S) Tabled in Committee | (S) Finance and Claims | | | |
| 02/24/15 | (S) Hearing | (S) Finance and Claims | | | |
| 02/23/15 | (S) Rereferred to Committee | (S) Finance and Claims | | | |
| 02/20/15 | (S) Committee Report--Bill Passed | (S) Judiciary | | | |
| 02/20/15 | (S) Committee Executive Action--Bill Passed | (S) Judiciary | 8 | 4 | |
| 02/16/15 | (S) Hearing | (S) Judiciary | | | |
| 02/13/15 | (S) Fiscal Note Printed | | | | |
| 02/10/15 | (S) Fiscal Note Received | | | | |
| 02/04/15 | (S) Referred to Committee | (S) Judiciary | | | |
| 02/04/15 | (S) First Reading | | | | |
| 02/03/15 | (C) Introduced Bill Text Available Electronically | | | | |
| 02/03/15 | (S) Fiscal Note Requested | | | | |
| 02/03/15 | (S) Introduced | | | | |
| 02/02/15 | (C) Draft Delivered to Requester | | | | |
| 01/30/15 | (C) Draft Ready for Delivery | | | | |
| 01/30/15 | (C) Fiscal Note Probable | | | | |
| 01/30/15 | (C) Draft in Assembly/Executive Director Review | | | | |
| 01/29/15 | (C) Draft in Final Drafter Review | | | | |
| 01/29/15 | (C) Draft to Drafter - Edit Review | | | | |

| Date | Action | Committee | Votes (Yes) | Votes (No) | Media |
|---|---|---|---|---|---|
| 01/29/15 | (C) Draft Back for Technical Correction | | | | |
| 01/28/15 | (C) Draft in Final Drafter Review | | | | |
| 01/26/15 | (C) Bill Draft Text Available Electronically | | | | |
| 01/26/15 | (C) Draft in Input/Proofing | | | | |
| 01/26/15 | (C) Draft to Drafter - Edit Review | | | | |
| 01/23/15 | (C) Draft in Legal Review | | | | |
| 01/23/15 | (C) Draft to Requester for Review | | | | |
| 12/16/14 | (C) Draft Request Received | | | | |

AN ACT RATIFYING A WATER RIGHTS COMPACT ENTERED INTO BY THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION, THE STATE OF MONTANA, AND THE UNITED STATES OF AMERICA; CREATING A UNITARY ADMINISTRATION AND MANAGEMENT ORDINANCE TO GOVERN WATER RIGHTS ON THE FLATHEAD RESERVATION; PROVIDING EXCEPTIONS FROM CERTAIN STATE WATER LAWS RELATED TO DEPARTMENT POWERS, JUDICIAL ENFORCEMENT, AND WATER RIGHTS PERMITTING; AMENDING SECTIONS 3-7-211, 85-2-111, 85-2-114, 85-2-301, 85-2-302, 85-2-306, 85-2-427, 85-2-506, AND 85-5-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1. Water rights compact entered into by the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, the State of Montana, and the United States ratified.** This Compact is entered into by and among the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, the State of Montana, and the United State of America to settle all existing claims to water of or on behalf of the Confederated Salish and Kootenai Tribes within the State of Montana.

ARTICLE I - RECITALS

WHEREAS, pursuant to the Hellgate Treaty of 1855, 12 Stat. 975, the Confederated Salish and Kootenai Tribes reserved the Flathead Indian Reservation; and

WHEREAS, the Confederated Salish and Kootenai Tribes claim aboriginal water rights and, pursuant to said Treaty, reserved water rights to fulfill the purposes of the Treaty and the Reservation; and

WHEREAS, in 1979, the United States, on its own behalf and on behalf of the Confederated Salish and Kootenai Tribes, their members and Allottees brought suit in the United States District Court for the District of Montana to obtain a final determination of the Tribes' water rights claims, see United States v. Abell, No. CIV-79-33-M (filed April 5, 1979); and

WHEREAS, as a result of Congressional action and subsequent judicial interpretation, state courts have been found to possess, under certain circumstances, adjudicatory jurisdiction over federal reserved water rights

held in trust by the United States for the benefit of Indians; see, McCarran Amendment 43 U.S.C. 666; Colorado River Conservation District v. United States, 424 U.S. 800 (1976); Arizona v. San Carlos Apache Tribe, 463 U.S. 545 (1983); and

WHEREAS, the State of Montana initiated a general stream adjudication pursuant to the provisions of Chapter 697, Laws of Montana 1979, which includes claims regarding the Confederated Salish and Kootenai Tribes' water rights; and

WHEREAS, the Montana Reserved Water Rights Compact Commission, under 85-2-702(1), MCA, is authorized to negotiate settlement of water rights claims filed by Indian tribes or filed on their behalf by the United States claiming reserved waters within the State of Montana; and

WHEREAS, the Federal district court litigation was stayed in 1983 pending the outcome of Montana State court water adjudication proceedings, see Northern Cheyenne v. Adsit, 721 F.2d 1187 (9th Cir.1983); and

WHEREAS, the adjudication of Confederated Salish and Kootenai Tribes' water rights in the State court proceeding has been stayed while negotiations are proceeding to conclude a compact resolving all water rights claims of the Confederated Salish and Kootenai Tribes; and

WHEREAS, the Confederated Salish and Kootenai Tribes, or their duly designated representatives, have authority to negotiate the Compact and the Tribal Council has the authority to execute this Compact pursuant to Article 6, Section 1, subsections (a), (c), and (u) of the Constitution and Bylaws of the Confederated Salish and Kootenai Tribes said Constitution adopted and approved under Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended; and

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. 516-17 and the Federal legislation ratifying this Compact identified in Article VIII.B; and

WHEREAS, the Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this Compact on behalf of the United States Department of the Interior pursuant to 43 U.S.C. 1457, inter alia, and appropriate Federal legislation ratifying this Compact as identified in Article VIII.B; and

WHEREAS, the Confederated Salish and Kootenai Tribes, the State of Montana, and the United States agree that the Tribal Water Right and other water rights described in this Compact, subject to the provisions of

the Act of Congress identified in Article VIII.B, is in satisfaction of the water rights claims of the Tribes, their members and Allottees, and of the United States on behalf of the Tribes and their members and Allottees; and

WHEREAS, the Parties agree that it is in the best interest of all Parties that the water rights claims of the Confederated Salish and Kootenai Tribes be settled through agreement between and among the Tribes, the State of Montana, and the United States; and

WHEREAS, the Parties agree that there is a clear hydrological interrelationship between the surface water and Groundwater of the Reservation, and each use of water on the Reservation may affect water use by all water users on the Reservation; and

WHEREAS, the Parties agree that prudent and knowledgeable conservation, management, and protection of the water resources of the Reservation are essential to the health and welfare of all residents of the Reservation; and

WHEREAS, the Parties seek to secure to all residents of the Reservation the quiet enjoyment of the use of waters of the Reservation for beneficial uses; and

WHEREAS, the Parties agree to protect Tribal Instream Flows, Existing Uses, and Historic Farm Deliveries to Flathead Indian Irrigation Project irrigators; and

WHEREAS, the Parties desire to create a unitary administration system that would provide a single system for the appropriation and administration of the waters of the Reservation and for the establishment and maintenance of a single system of centralized records for all water uses of the Reservation regardless of whether the use is based on State or Federal law.

NOW THEREFORE, the Parties agree to enter into the Compact for the purpose of settling the water rights claims of the Confederated Salish and Kootenai Tribes, their members, and Allottees of the Flathead Indian Reservation, and of the United States on behalf of the Tribes, their members and Allottees, and to provide the necessary foundation for the establishment of a board composed of Tribal and State appointed representatives to provide for the unified administration of all water resources on the Reservation.

## ARTICLE II - DEFINITIONS

The following definitions shall apply for purposes of the Compact:

1. "Acre-foot" or "Acre-feet" means the amount of water necessary to cover one acre to a depth of one foot and is equivalent to 43,560 cubic feet of water.

2. "Adaptive Management" means an ongoing process of decision-making, based on water measurement

and accounting designed to continuously manage and improve the allocation of water between Instream Flows, Minimum Reservoir Pool Elevations, and FIIP Water Use Rights pursuant to the Adaptive Management Appendix 3.5.

3. "Allottee" or "Allottees" means an owner of an interest in a tract of land held in trust by the United States which was allotted pursuant to the Act of April 23, 1904, 33 Stat. 302, as amended, or the Act of February 25, 1920, 41 Stat. 452, as amended.

4. "Alternate Value" means, as applied to the consensual agreements provided for by Article III.G.3, the quantity of water allowed under a claim decreed by the Montana Water Court or water right granted by the DNRC.

5. "Appropriation Right" means a right to appropriate water issued by the Water Management Board pursuant to the terms of this Compact and the Law of Administration.

6. "Arising Under State Law" means, as applied to a water right, a water right created under Montana law or a water right held by a nonmember of the Tribes on land not held in trust by the United States for the Tribes or a Tribal member and for which a claim was required to be filed in the Montana general stream adjudication.

7. "Basin 76D" means the hydrologic Basin 76D, including the Kootenai River and its tributaries, as shown in Appendix 1.

8. "Basin 76E" means the hydrologic Basin 76E, including Rock Creek and its tributaries, as shown in Appendix 1.

9. "Basin 76F" means the hydrologic Basin 76F, including the Blackfoot River and its tributaries, as shown in Appendix 1.

10. "Basin 76G" means the hydrologic Basin 76G, including the Clark Fork River above the Blackfoot River, and its tributaries, as shown in Appendix 1.

11. "Basin 76GJ" means the hydrologic Basin 76GJ, including Flint Creek and its tributaries, as shown in Appendix 1.

12. "Basin 76H" means the hydrologic Basin 76H, including the Bitterroot River and its tributaries, as shown in Appendix 1.

13. "Basin 76I" means the hydrologic Basin 76I, including the Middle Fork of the Flathead River and its tributaries, as shown in Appendix 1.

14. "Basin 76J" means the hydrologic Basin 76J, including the South Fork of the Flathead River and its tributaries, as shown in Appendix 1.

15. "Basin 76K" means the hydrologic Basin 76K, including the Swan River and its tributaries, as shown in Appendix 1.

16. "Basin 76L" means the hydrologic Basin 76L, including the Flathead River below Flathead Lake, and its tributaries, as shown in Appendix 1.

17. "Basin 76LJ" means the hydrologic Basin 76LJ, including the Flathead River to and including Flathead Lake, and its tributaries, as shown in Appendix 1.

18. "Basin 76M" means the hydrologic Basin 76M, including the Clark Fork River between the Blackfoot River and the Flathead River, and its tributaries, as shown in Appendix 1.

19. "Basin 76N" means the hydrologic Basin 76N, including the Clark Fork River below the Flathead River, and its tributaries, as shown in Appendix 1.

20. "Call" means the right of the holder of a water right with a senior priority date and an immediate need for a use of water to require a holder of a water right with a junior priority date to refrain from appropriating water otherwise physically available until the senior water right is satisfied.

21. "Cfs" means cubic feet per second.

22. "Change in Use" means an authorized change in the point of diversion, the place of use, the period of use, the purpose of use, or the place of storage of an Appropriation Right issued by the Water Management Board under this Compact and the Law of Administration, or of an Existing Use. A changed water right retains the original priority date of that right.

23. "Compact" means this water rights settlement entered into by the Confederated Salish and Kootenai Tribes, the State and the United States.

24. "Compact Implementation Technical Team" or "CITT" means the entity established by this Compact to plan and advise the Project Operator on the implementation of FIIP Operational Improvements, Rehabilitation and Betterment, and Adaptive Management. The CITT duties and responsibilities are defined in more detail in Appendix 3.5.

25. "Compact Management Committee" or "CMC" means the entity described in Article IV.G.5 formed to provide policy and administrative oversight of the CITT.

26. "Court of Competent Jurisdiction" means a State or Tribal court that otherwise has jurisdiction over the matter so long as the parties to the dispute to be submitted to that court consent to its exercise of jurisdiction, but if no such court exists, a Federal court.

27. "DNRC" means the Montana Department of Natural Resources and Conservation, or any successor agency.

28. "Effective Date" means the date on which the Compact is finally approved by the Tribes, by the State, and by the United States, and on which the Law of Administration has been enacted and taken effect as the law of the State and the Tribes, whichever date is latest.

29. "Existing Use" means a use of water under color of Tribal, State or Federal law in existence as of the Effective Date, including uses in existence on that date that are eligible for either of the registration processes set forth in the Law of Administration; provided that any portion of a Water Right Arising Under State Law within the Reservation that is, at any point after the date the ratification of the Compact by the Montana Legislature takes effect under State law, voluntarily relinquished or is legally determined to be abandoned, relinquished, or have otherwise ceased to exist, shall be stricken from the relevant basin decree as a Water Right Arising Under State Law and be entitled to no further protection as such a right or as an Existing Use.

30. "Flathead Indian Irrigation Project" or "FIIP" means the irrigation project developed by the United States to irrigate lands within the Reservation pursuant to the Act of April 23, 1904, Public Law 58-159, 33 Stat. 302 (1904), and the Act of May 29, 1908, Public Law 60-156, 35 Stat. 441 (1908), and includes, but is not limited to, all lands, reservoirs, easements, rights-of-way, canals, ditches, laterals, or any other FIIP facilities (whether situated on or off the Reservation), headgates, pipelines, pumps, buildings, heavy equipment, vehicles, supplies, records or copies of records and all other physical, tangible objects, whether of real or personal property, used in the management and operation of the FIIP.

31. "FIIP Influence Area" means the lands influenced by the operations of the FIIP as identified on the map attached hereto as Appendix 2.

32. "FIIP Water Use Right" means the water right set forth in Article III.C.1.a that is dedicated to use by the FIIP and FIIP irrigators and includes uses of water for irrigation and Incidental Purposes allowed by the FIIP through water service contracts. This water right is the source for the entitlement to delivery of available irrigation water for assessed parcels as provided by Article IV.D.2.

33. "Flathead Indian Reservation" or "Reservation" means all land within the exterior boundaries of the Indian Reservation established under the July 16, 1855 Treaty of Hellgate (12 Stat. 975), notwithstanding the issuance of any patent, and including rights-of-way running through the Reservation.

34. "Flathead Reservation Water Management Board," "Water Management Board," or "Board" means

the entity established by this Compact and the Law of Administration to administer the use of all water rights on the Reservation upon the Effective Date.

35. "Flathead System Compact Water" means that portion of the Tribal Water Right consisting of 229,383 Acre-feet per year that the Tribes may withdraw from the Flathead River or Flathead Lake, which includes up to 90,000 Acre-feet per year stored in Hungry Horse Reservoir, with a maximum total volume consumed of 128,158 Acre-feet per year.

36. "Historic Farm Deliveries" means the aggregate annual volume of water for irrigation and Incidental Purposes on the FIIP that was delivered to all farm turnouts within an individual River Diversion Allowance Area prior to the date the ratification of the Compact by the Montana Legislature takes effect under State law. Historic Farm Deliveries include historic crop consumption and estimated standard rates of on-farm conveyance and irrigation application inefficiencies and are used to evaluate RDA values pursuant to Article IV.D.1.e. Historic Farm Delivery volumes are specified in Appendix 3.3.

37. "Groundwater" means any water that is beneath the surface of the earth.

38. "High Mountain Lakes" means those lakes shown in Appendix 17.

39. "Hungry Horse Dam" means the dam that is a part of the Hungry Horse Project.

40. "Hungry Horse Project" means that project authorized by the Act of June 5, 1944 (58 Stat. 270, Public Law 78-329) to be constructed and operated by the US Bureau of Reclamation. The Act of May 29, 1958 (Public Law 85-428) amended the authorizing act to make Hungry Horse a Reclamation project subject to Reclamation laws.

41. "Hungry Horse Reservoir" means the reservoir that is a part of the Hungry Horse Project.

42. "Incidental Purpose(s)" means water delivered through or diverted from FIIP facilities for purposes incidental to irrigation, including but not limited to Rehabilitation and Betterment, and lawn and garden purposes allowed by the FIIP through water service contracts.

43. "Individual Indian Owner" means a Tribal member and his or her heirs or an Allottee and his or her heirs who is an owner of an interest in trust or restricted lands and who has a documented use of the Tribal Water Right registered pursuant to the terms of this Compact and the Law of Administration.

44. "Instream Flow" means a stream flow retained in a watercourse to benefit the aquatic environment. Instream Flow may include Natural Flow or streamflow affected by regulation, diversion, or other modification. A water right for Instream Flow purposes is quantified for a stream reach and measured for enforcement purposes

at a specified point.

45. "Law of Administration" or "Unitary Administration and Management Ordinance" means the body of laws enacted by both the State and the Tribes to provide for the administration of surface water and Groundwater within the Reservation, that are both materially consistent with the substantive provisions of Appendix 4.

46. "Lease" means, as applied to the Tribal Water Right, an authorization for a Person or Persons to use any part of the Tribal Water Right through a service contract, temporary assignment, or other similar agreement of limited duration.

47. "MFWP" means the Montana Department of Fish, Wildlife, and Parks, or any successor agency.

48. "Minimum Enforceable Instream Flows" or "MEFs" means the schedule of monthly minimum enforceable streamflow levels that are set forth in Appendix 3.1.

49. "Minimum Reservoir Pool Elevations" means the minimum pool water elevations for FIIP reservoirs specified in the table attached hereto as Appendix 3.1 and abstracts of water right attached hereto as Appendix 15.

50. "Natural Flow" means the rate and volume of water movement past a specified point on a natural stream, produced from a drainage area for which there have been no effects caused by diversion, storage, import, export, return flow, or changes in consumptive use.

51. "New Development" means the development of a use of the Tribal Water Right set forth in the Compact, from any source, commencing after the Effective Date, and encompasses all uses of the Tribal Water Right not included within the definition of Existing Use.

52. "Operational Improvements" means practices that improve the ability of the Project Operator to plan for and manage water storage and allocation between Instream Flows and FIIP Water Use Rights. Operational Improvements address water supply planning, reservoir management, Instream Flow management, water accounting and reporting, Stock Water delivery, irrigation wastewater, measurement at diversion works, water measurement at farm delivery locations, and water measurement at irrigation wasteways. Operational Improvements are set forth in the schedule attached hereto as Appendix 3.4.

53. "Parties" means the Tribes, the State, and the United States.

54. "Person" means an individual or any other entity, public or private, including the Tribes, the State, and the United States, and all officers, agents and departments of each sovereign.

55. "Project Operator" means the entity with the legal authority and responsibility to operate the Flathead

Indian Irrigation Project.

56. "Reallocated Water" means the water from that portion of any given FIIP diversion or RDA that is made available through increased efficiency resulting from Rehabilitation and Betterment projects.

57. "Rehabilitation and Betterment" means both irrigation facility upgrades that improve water management and operational control at irrigation diversion works, and irrigation facility upgrades to reduce losses in conveyance of water from irrigation sources of supply to irrigation points of use. Rehabilitation and Betterment actions include, but are not limited to, reconstruction, replacement, and automation at irrigation diversion works; lining of open canals; and placement of open canals in pipe.

58. "River Diversion Allowance" or "RDA" means initially the volume of water identified in Appendix 3.2 and defined for wet, normal and dry Natural Flow years that is necessary to be diverted or pumped to supply the FIIP Water Use Right. As Reallocated Water is made available through Rehabilitation and Betterment, the RDA is the amount defined in Appendix 3.2, reduced by the volume of Reallocated Water made available by a particular Rehabilitation and Betterment project.

59. "River Diversion Allowance Area" or "RDA Area" means geographic divisions of the FIIP to which water is diverted. RDA Areas are depicted in Appendix 3.2.

60. "Secretary" means the Secretary of the United States Department of the Interior, or the Secretary's duly authorized representative.

61. "Shared Shortages" means a water management procedure to be applied when water supply is insufficient to satisfy both MEFs and RDAs simultaneously.

62. "State" means the State of Montana and all officers, agencies, departments and political subdivisions thereof.

63. "Stock Water" means water used for livestock.

64. "Target Instream Flows" or "TIFs" means the schedule of monthly Instream Flow levels, defined for normal and wet Natural Flow years that are identified in Appendix 3.1.

65. "Tribal Council" means the duly elected governing body of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana.

66. "Tribal Natural Resources Department" means the governmental subdivision of the Tribes authorized by Tribal Ordinance No. 78-B, as amended, or any successor agency.

67. "Tribal Water Right" means the water rights of the Confederated Salish and Kootenai Tribes, including

any Tribal member or Allottee, the basis of which are federal law, as set forth in Article III.A, Article III.C.1.a through j, Article III.C.1.k.i, Article III.C.1.l.i, Article III.D.1 through 3 and Article III.D.7 and 8. The term "Tribal Water Right" also includes those rights identified in Article III.H that are appurtenant to lands taken into trust by the United States on behalf of the Tribes.

68. "Tribes" means the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, and all officers, agencies, and departments thereof.

69. "United States" means the Federal government and all officers, agencies and departments thereof.

70. "Water Rights Arising Under State Law" means those valid water rights Arising Under State Law existing as of the Effective Date and not subsequently relinquished or abandoned, as those rights are: decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permitted by the DNRC; exempted from filing in the Montana general stream adjudication pursuant to 85-2-222, MCA; or excepted from the permitting process pursuant to 85-2-306, MCA.

71. "Wetland" means an area that is inundated or saturated by surface water or Groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

ARTICLE III -WATER RIGHTS OF THE TRIBES

The water rights of the Tribes quantified in Article III are composed of two parts: water rights whose basis is Federal law that are defined and referred to as the Tribal Water Right and those Water Rights Arising Under State Law identified in Article III.C.1.k.ii, III.C.1.l.ii, III.D.4, 5, and 6, and III.H.

A. Religious or Cultural Uses. The Tribal Water Right described in this Article III includes all traditional, religious, or cultural uses of water by members of the Confederated Salish and Kootenai Tribes within Montana. Individual exercises of traditional, religious, or cultural uses are exempt from the Registration process contained in the Law of Administration.

B. Abstracts of Water Right. Abstracts of water right appended to this Compact are a substantive element of this Compact. The language of the abstracts, including all informational remarks, shall control in the event of any inconsistency between the Compact and the abstracts of water right; provided however, that the Parties upon written mutual agreement may make technical corrections to the abstracts prior to the Parties submission to the Montana Water Court of the motion for entry of the Proposed Decree identified in Article VII.B. Such modifications

are pursuant to, and shall not be deemed an amendment of, this Compact.

C. Basins 76L and 76 LJ and Flathead Indian Irrigation Project Irrigation Water Diversions from Basins 76F and 76N.

1. Quantification.

a. Flathead Indian Irrigation Project. The Tribes have the right to water that is supplied to the Flathead Indian Irrigation Project to be used for such purposes in such volumes and flow rates and from such sources of supply as identified in the abstracts of water right attached hereto as Appendix 5. The FIIP will serve up to, but not more than 135,000 acres. The exercise of this portion of the Tribal Water Right shall be satisfied by meeting the RDA values for each RDA Area described in Appendix 3.2 as evaluated pursuant to Article IV.D.1.e, and is subject to Article IV.D through F.

The priority date for the portion of the Tribal Water Right used by the FIIP is July 16, 1855.

b. Existing Uses by the Tribes, their Members and Allottees.

i. The Tribal Water Right includes all Existing Uses by the Tribes, their members and Allottees that are not Water Rights Arising Under State Law and are not otherwise specifically quantified in other sections of this Article III.

ii. Water Rights Arising Under State Law held by the Tribes, their members and Allottees will be satisfied pursuant to their own terms as finally decreed by the Montana Water Court or permitted by the DNRC.

iii. For each Existing Use identified in Article III.C.1.b.i to be valid and enforceable, the Tribes, or each Tribal member or Allottee claiming such an Existing Use, shall complete the process for the registration of uses of the Tribal Water Right set forth in the Law of Administration. Such uses include but are not limited to irrigation, Stock Water, domestic, commercial, municipal and industrial purposes, as well as those historically irrigated allotments that are held for individuals in trust by the United States that are not served by the FIIP and that are identified on the map and table attached hereto as Appendix 6.

iv. Uses of the Tribal Water Right for which abstracts are appended to this Compact, including uses on the FIIP, are exempt from the registration requirement set forth in Article III.C.1.b.iii.

v. The priority date for water uses registered pursuant to Article III.C.1.b.iii and the Law of Administration is July 16, 1855.

c. Flathead System Compact Water. The Tribes have a direct flow water right from the Flathead River with the following elements:

Source of Water: Flathead River, Flathead Lake, and the South Fork of the Flathead River up to Hungry Horse Reservoir

Point of Diversion: From Flathead Lake or the Flathead River, either on or off of the Reservation

Purpose: Any beneficial use

Diversion Volume: 229,383 Acre-feet per year

Depletion Volume: 128,158 Acre-feet per year

Period of Diversion and Depletion: January 1 through December 31

i. As part of the Tribal Water Right quantified in this Article III.C.1.c, the Tribes shall be entitled to an allocation of 90,000 Acre-feet per year, as measured at the Hungry Horse Dam, of storage water in Hungry Horse Reservoir.

ii. This water right shall be used in a manner that ensures impacts associated with the exercise of this water right are no greater than those identified in model run: Natural Q + 90K of the United States Bureau of Reclamation's Final Flathead Basin Depletions Study (USBR, October 2012), attached hereto as Appendix 7. In the event that the impacts exceed those identified in model run: Natural Q + 90K of the United States Bureau of Reclamation's Final Flathead Basin Depletions Study, the use of the water right set forth in this Article III.C.1.c shall be reduced in such amounts as are necessary to immediately achieve impacts that are no greater than those identified in model run: Natural Q + 90K of the United States Bureau of Reclamation's Final Flathead Basin Depletions Study.

iii. The releases of the stored water identified in Article III.C.1.c.i shall be limited in accordance with the "Biological Impact Evaluation and Operational Constraints for a proposed 90,000 Acre-foot withdrawal" (State of Montana, September 14, 2011) attached hereto as Appendix 8. The Parties upon mutual written agreement, and in conformance with other applicable provisions of law including but not limited to the Endangered Species Act of 1973, 16 U.S.C. 1531, et seq. (ESA), may amend the Biological Impact Evaluation Constraints identified in the September 14, 2011 report. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

iv. The exercise of this water right shall conform with the minimum instream flow schedules, as measured at the USGS gaging station on the Flathead River at Columbia Falls (12363000) and the USGS gaging station on the Flathead River at Polson (12372000) as identified in Tables 3 through 6 of Appendix 7, as well as the minimum flow requirements set forth in Table 5 that must also be met downstream at the USGS gaging station

on the Flathead River at Perma (123887000). The exercise of this water right shall also conform to the ramping rates, as measured below Kerr and Hungry Horse Dams, and identified in Tables 3 through 6 of Appendix 7. In the event that the minimum instream flow schedules or ramping rates are not met, the use of the water right set forth in this Article III.C.1.c shall be suspended until such time as those minimum instream flow schedules and ramping rates are achieved. The Parties upon mutual written agreement, and in conformance with applicable ESA and Federal Energy Regulatory Commission licensing requirements for the three previously identified sites, may amend the limitations for releases from Hungry Horse Reservoir that are required to conform with minimum instream flow and ramping rate schedules at these sites. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

v. The exercise of this water right shall also conform with the Flathead Lake filling criteria identified on page 12 of Appendix 7.

vi. The Tribes may use any amount of the stored water identified in Article III.C.1.c.i that is not necessary to be released each year pursuant to the provisions of Article III.C.1.c.ii through v, for any beneficial purpose, subject to the terms and conditions of this Compact.

vii. Use of the 90,000 Acre-feet of water from Hungry Horse Reservoir is subject to the approval of, and any terms and conditions specified by, Congress.

viii. The priority date for Flathead System Compact Water is July 16, 1855.

ix. Any development by the Tribes of this Flathead System Compact Water Right outside the boundaries of the Reservation shall be pursuant to Article IV.B.5.c.

x. The Parties agree that nothing in this Compact precludes the Tribes from leasing Flathead System Compact Water to FIIP irrigators.

xi. The abstract of water right for this Flathead System Compact Water Right is attached hereto as Appendix 9.

d. Instream Flow Rights on Reservation.

i. Natural Instream Flows. The Tribes have Instream Flow rights in the quantities and locations identified in the abstracts of water right attached hereto as Appendix 10.

ii. FIIP Instream Flows. The Tribes have Instream Flow rights in the quantities and locations identified in the abstracts of water right attached hereto as Appendix 11. The exercise of this portion of the Tribal Water Right is subject to Article IV.C through F.

iii. Other Instream Flows. The Tribes have Instream Flow rights in the quantities and locations identified in the abstracts of water right attached hereto as Appendix 12. The Parties agree that a right identified in Appendix 12 shall only become enforceable on the date that an enforceable flow schedule for that right has been established pursuant to the process set forth in the Law of Administration, Section 2-1-115 of this Ordinance, for the development of such enforceable schedules.

iv. Interim Instream Flows. Until such time as the Instream Flow water rights set forth in Article III.C.1.d.ii become enforceable pursuant to Article IV.C, the Tribes shall be entitled to enforce the interim Instream Flows contained in Appendix 13 consistent with the provisions in Article IV.C and IV.E. The Tribes and the United States shall enforce these interim Instream Flows pursuant to Appendix 13 or existing practice as of December 31, 2014, and as described in the protocols in Appendix 14.

v. The priority date for the Instream Flow water rights set forth in this Article III.C.1.d is time immemorial.

e. Minimum Reservoir Pool Elevations in Flathead Indian Irrigation Project Reservoirs.

i. The Tribes have the right to water necessary to maintain Minimum Reservoir Pool Elevations for FIIP reservoirs in the quantities and locations set forth in the table and abstracts of water right attached hereto as Appendix 15. The exercise of this portion of the Tribal Water Right is subject to Article IV.C and E and superseding Federal law allowing for regulation of reservoir elevations.

ii. The Minimum Reservoir Pool Elevations will become enforceable according to the schedule attached hereto as Appendix 3.4.

iii. The priority date for the water rights set forth in this Article III.C.1.e is July 16, 1855.

iv. Until such time as the Minimum Reservoir Pool Elevations set forth in Article III.C.1.e become enforceable pursuant to Article IV.C, the Tribes shall be entitled to enforce those interim reservoir pool elevations identified in Appendix 13. The Tribes and the United States shall enforce these interim reservoir pool elevations only pursuant to Appendix 13 or existing practice as of December 31, 2014, and subject to superseding Federal law allowing for regulation of reservoir elevations.

f. Wetland Water Right. The Tribes have the right to all naturally occurring water necessary to maintain the Wetlands identified in the abstracts of water right attached hereto as Appendix 16. The priority date for the Wetland water rights set forth in this Article III.C.1.f is time immemorial.

g. High Mountain Lakes Water Right. The Tribes have the right to all naturally occurring water necessary to maintain the High Mountain Lakes identified in the abstracts of water right attached hereto as Appendix 17.

The priority date for the High Mountain Lakes water rights set forth in this Article III.C.1.g is time immemorial.

h. Flathead Lake. The Tribes have the right to all naturally occurring water necessary to maintain the level of the entirety of Flathead Lake at an elevation of 2,883 feet as described in the abstract of water right attached hereto as Appendix 18. The priority date for the Flathead Lake water right set forth in this Article III.C.1.h is time immemorial.

i. Boulder Creek Hydroelectric Project. The Tribes have the right to water necessary to operate the Boulder Creek Hydroelectric Project as identified in the abstracts of water right attached hereto as Appendix 19. The priority date for the Boulder Creek Hydroelectric Project water right set forth in this Article III.C.1.i is July 16, 1855.

j. Hellroaring Hydroelectric Project. The Tribes have the right to water necessary to operate the Hellroaring Hydroelectric Project as identified in the abstracts of water right attached hereto as Appendix 20. The priority date for the Hellroaring Hydroelectric Project water right set forth in this Article III.C.1.j is July 16, 1855.

k. Wetlands Appurtenant to Lands Owned by Montana Fish Wildlife and Parks.

i. The Tribes and Montana Fish Wildlife and Parks (MFWP) have the right to all naturally occurring water necessary to maintain the Wetlands identified in the abstracts of water right attached hereto as Appendix 21. The priority date for Wetland water rights appurtenant to lands owned by MFWP is time immemorial.

ii. Upon the Effective Date, the Tribes shall be added as a co-owner with MFWP of water right number 76L 153988-00, the abstract of which is attached hereto as Appendix 22. MFWP shall make reasonable efforts to defend this right in the Montana general stream adjudication. The Tribes have the right but not the duty to participate in the defense of this right in the Montana general stream adjudication.

iii. The Tribes shall be added in an expeditious manner as a co-owner to any water right with a fish or fish and wildlife purpose that is appurtenant to land acquired by MFWP on the Reservation after the Effective Date.

iv. The Tribes shall be added in an expeditious manner as a co-owner to any Wetlands water right acquired by MFWP pursuant to the Law of Administration after the Effective Date.

v. MFWP shall be the sole entity entitled to manage the water rights identified in Article III.C.1.k. The recognition of these co-owned water rights does not confer on the Tribes any authority over the management of the MFWP-owned lands to which these water rights are appurtenant.

vi. MFWP shall meet and confer with the Tribes on a biennial basis, or on such other timeframe as the Tribes and MFWP may mutually agree, to discuss the exercise of these water rights. Such modifications to the

meeting schedule are pursuant to, and shall not be deemed an amendment of, this Compact.

l. Wetlands Appurtenant to Lands Owned by Department of Interior Fish and Wildlife Service.

i. The Tribes and the Department of the Interior's Fish and Wildlife Service (FWS) have the right to all naturally occurring water necessary to maintain the Wetlands identified in the abstracts of water right attached hereto as Appendix 23. The priority date for Wetland water rights appurtenant to lands owned by FWS is time immemorial.

ii. Upon the Effective Date, the Tribes shall be added as a co-owner with FWS of water right numbers 76L 99338 00, 76L 99339 00, and 76L 99340 00, the abstracts of which are attached hereto as Appendix 24. FWS shall make reasonable efforts to defend these rights in the Montana general stream adjudication. The Tribes have the right but not the duty to participate in the defense of these rights in the Montana general stream adjudication.

iii. The Tribes shall be added in an expeditious manner as a co-owner to any water right with a fish or fish and wildlife purpose that is appurtenant to land acquired by FWS on the Reservation after the Effective Date.

iv. The Tribes shall be added in an expeditious manner as a co-owner to any Wetlands water right acquired by FWS pursuant to the Law of Administration, after the Effective Date.

v. FWS shall be the sole entity entitled to manage the water rights identified in this Article III.C.1.l. The recognition of these co-owned water rights does not confer on the Tribes any authority over the management of the FWS-owned lands to which these water rights are appurtenant.

vi. FWS shall meet and confer with the Tribes on a biennial basis, or on such other timeframe as the Tribes and FWS may mutually agree, to discuss the exercise of these water rights. Such modifications to the meeting schedule are pursuant to, and shall not be deemed an amendment of, this Compact.

D. Instream Flow Water Rights Off of the Reservation.

1. Mainstem Instream Flow Right in the Kootenai River (Basin 76D). The Tribes have an Instream Flow water right for the mainstem of the Kootenai River for the reach and with the associated flow rates set forth in the abstract of water right attached hereto as Appendix 25. The measurement point for this water right is USGS streamflow gage #12305000 located at Leonia, Idaho.

a. The priority date for this water right is time immemorial.

b. The period of use of this water right is January 1 to December 31 of each year.

c. The purpose of this water right is for the maintenance and enhancement of fish habitat to benefit the

instream fishery. This right shall not be changed to any other or additional purpose, changed to consumptive use, or transferred to different ownership.

d. The point of diversion and place of use for this water right is instream. This water right shall not be exercised in conjunction with any artificial diversion.

e. The ability to enforce this right shall be suspended so long as Libby Dam remains in existence and the Army Corps of Engineers' operations of that dam are conducted consistently with the 2008 Federal Columbia River Power System Biological Opinion, the 2010 updated Biological Opinion, and the 2014 Supplemental Federal Columbia River Power System Biological Opinion, specifically as described in Reasonable and Prudent Alternative Action (RPA) No. 4 (Storage Project Operations), Table No. 1 (Libby Dam), including the Northwest Power and Conservation Council's 2003 mainstem amendments to the Columbia River Basin Fish and Wildlife Program, or any subsequent Biological Opinion(s) governing the same RPAs and Operations.

f. In the event of changes to the U.S. Army Corps of Engineers' (Corps) responsibilities under the ESA, such as the delisting of resident and anadromous fish species, that no longer require the Corps to operate Libby Dam pursuant to ESA section 7 biological opinions or other substantive ESA requirements, the United States, acting through the Corps, the Tribes, and the State shall establish written protocols and understandings on meeting and enforcing the Tribes' mainstem Instream Flow right in the Kootenai River while also ensuring that the Corps' operations of Libby Dam meet all Federal statutory and regulatory requirements and obligations. Provided however, that any such enforcement protocol shall not alter the limitations on Call set forth in Article III.D.1.g. The establishment of such protocols and understandings are pursuant to, and shall not be deemed an amendment of, this Compact.

g. Should the suspension on enforcement set forth in Article III.D.1.e be lifted due to the removal of Libby Dam, this water right may be exercised to make a Call only against junior users whose point of diversion is from the mainstem of the Kootenai River and not its tributaries, the purpose of whose rights is irrigation and whose source of supply is surface water, or against junior users the purpose of whose rights is irrigation, whose source of supply is Groundwater that is connected to the mainstem of the Kootenai River, and whose flow rate is greater than 100 gallons per minute.

h. Call may be made only when the average daily flow drops below the enforceable level for the previous 24-hour period.

2. Mainstem Instream Flow Right in the Swan River (Basin 76K). The Tribes have an Instream Flow water

right for the reach of the mainstem of the Swan River with the associated flow rates set forth in the abstract of water right attached hereto as Appendix 26. The measurement point for this water right is USGS streamflow gage #12370000 located immediately below Swan Lake near Big Fork, Montana.

a. The priority date for this water right is time immemorial.

b. The period of use of this water right is January 1 to December 31 of each year.

c. The purpose of this water right is for the maintenance and enhancement of fish habitat to benefit the instream fishery. This right shall not be changed to any other or additional purpose, changed to consumptive use, or transferred to different ownership.

d. The point of diversion and place of use for this water right is instream. This water right shall not be exercised in conjunction with any artificial diversion.

e. The Tribes, and/or the United States on behalf of the Tribes, shall be entitled to make a Call to enforce this water right only against junior users the purpose of whose rights is irrigation and whose source of supply is surface water, or against junior users the purpose of whose rights is irrigation, whose source of supply is Groundwater connected to surface sources in Basin 76K and whose flow rate is greater than 100 gallons per minute.

f. Call may be made only when the average daily flow drops below the enforceable level for the previous 24-hour period.

3. Mainstem Instream Flow Right in the Lower Clark Fork River (Basins 76M and 76N). The Tribes have a 5000 cfs Instream Flow water right for the reach of the mainstem of the Clark Fork River as set forth in the abstract of water right attached hereto as Appendix 27. The measurement point for this water right is USGS streamflow gage #12391950 located immediately below Cabinet Gorge Dam in Idaho.

a. The priority date for this water right is time immemorial.

b. The period of use of this water right is January 1 to December 31 of each year.

c. The purpose of this water right is for the maintenance and enhancement of fish habitat to benefit the instream fishery. This right shall not be changed to any other or additional purpose, changed to consumptive use, or transferred to different ownership.

d. The point of diversion and place of use for this water right is instream. This water right shall not be exercised in conjunction with any artificial diversion.

e. The Tribes, and/or the United States on behalf of the Tribes, shall be entitled to make a Call to enforce

this water right only against junior users whose point of diversion is from the mainstem of the Clark Fork River and not its tributaries, the purpose of whose rights is irrigation and whose source of supply is surface water, or against junior users the purpose of whose rights is irrigation, whose source of supply is Groundwater connected to the mainstem of the Clark Fork River and whose flow rate is greater than 100 gallons per minute.

f. Call may be made only when the average daily flow drops below the enforceable level for the previous 24-hour period.

g. For so long as the Cabinet Gorge and Noxon Dams remain in existence, the enforceable level of this right is a flow rate equal to the lesser of 5000 cfs or the minimum flow level established by the FERC as a condition on the license for the Cabinet Gorge and Noxon Dams as that license condition may be modified over time.

4. Co-ownership of Instream and Public Recreation Water Rights Held by MFWP.

a. Upon the Effective Date, the Tribes shall be added as a co-owner with MFWP of the Water Rights Arising Under State Law held by MFWP for Instream Flow and recreation purposes that are identified on the tables attached hereto as Appendix 28 and Appendix 29. Nothing in this co-ownership changes any of the other elements of these Water Rights Arising Under State Law, including their priority dates or flow rates.

i. The Water Rights Arising Under State Law identified in Appendix 28 shall be included as part of the proposed decree to be filed with the Montana Water Court pursuant to Article VII.B.1.

ii. The Water Rights Arising Under State Law identified in Appendix 29 shall proceed through the Montana general stream adjudication as though they were not included in this Compact. MFWP shall make reasonable efforts to defend each of these rights identified in Appendix 29 in the Montana general stream adjudication. The Tribes have the right but not the duty to participate in the defense of these rights in the Montana general stream adjudication.

b. As co-owners, the Tribes and MFWP shall meet and confer on a biennial basis, or on such other timeframe as the Tribes and MFWP may mutually agree, to discuss the exercise of the rights identified in Article III.D.4.a, with a goal of establishing a joint plan for the exercise of these rights. Notwithstanding this planning process, the Tribes and MFWP each retain(s) the unilateral right to exercise each water right identified in Article III.D.4.a as each deem(s) appropriate, but neither the Tribes nor MFWP has any affirmative duty to take any particular action in regard to the exercise of any of these rights.

5. Co-ownership of Water Right Number 76M 94404-00 (Milltown Dam) in Basin 76G (Upper Clark Fork).

a. Upon the date the ratification of this Compact by the Montana Legislature becomes effective under State law, Water Right Arising Under State Law number 76M 94404-00 is changed as follows: the right is split into two separate active and enforceable Water Rights Arising Under State Law, 76M 94404-01 and 76M 94404-02, and the original water right elements are changed to support the maintenance and enhancement of fish habitat and take the form of two enforceable hydrographs. The elements of the changed and split water right are set forth in the two water rights abstracts attached hereto as Appendix 30. The measurement point for 76M 94404-01 is the USGS gage #12334550 at Turah, Montana, and the measurement point for 76M 94404-02 is the USGS gage #1234000 at Bonner, Montana.

i. The period of use of these water rights is January 1 to December 31 of each year.

ii. The point of diversion and place of use for these water rights is instream.

iii. These water rights shall not be exercised in conjunction with any artificial diversion.

iv. MFWP, and the Tribes after they become co-owners, and subject to the limitation on enforcement set forth in Article III.D.5.c, shall be entitled to make a Call to enforce these water rights only against junior users the purpose of whose rights is irrigation and whose source of supply is surface water, or against junior users the purpose of whose rights is irrigation, whose source of supply is Groundwater and whose flow rate is greater than 100 gallons per minute.

v. The enforceable levels of these water rights are identified in the table attached hereto as Appendix 31. The minimum enforceable level of this right is 700 cfs at the location of USGS gage #1234000 at Bonner, and 500 cfs at the location of USGS gage #12334550 at Turah.

vi. Call may be initiated on the day following a five-consecutive-day-period in which four out of five average daily river flows fall below their respective daily enforceable hydrograph values. Call may persist until such time as two average daily flows of the previous five-consecutive-day-period are in excess of their respective enforceable hydrograph values.

b. Upon the Effective Date, the Tribes shall be a co-owner with MFWP of these water rights. As co-owners, the Tribes and MFWP shall meet and confer on a biennial basis, or on such other timeframe as the Tribes and MFWP may mutually agree to, regarding the exercise of these rights, with a goal of establishing a joint plan for the exercise of these rights. The establishment of such a plan is pursuant to, and shall not be deemed an amendment of, this Compact. Notwithstanding this planning process, the Tribes and MFWP each retains the unilateral right to exercise these water rights as each deems appropriate, but neither the Tribes nor MFWP has

any affirmative duty to take any particular action in regard to the exercise of these rights.

c. The ability to enforce these rights shall be suspended for a period of 10 years from the date the ratification of this Compact by the Montana Legislature becomes effective under State law. During and after this period, the Tribes and MFWP shall engage with other stakeholders in the Upper Clark Fork Basin on water management subjects including, but not limited to, drought planning and the exercise of these water rights in conjunction with the other water rights in the Upper Clark Fork Basin.

d. For any analysis of the legal availability of water in the Upper Clark Fork Basin, these rights shall be considered to have a combined year-round flow rate of 2,000 cfs as measured at the location of USGS gauge #12340500 below the confluence of the Blackfoot and Clark Fork Rivers.

e. No owner of these water rights, acting independently or jointly, shall be entitled to lease, sell or change the purpose of these water rights.

f. The Water Rights Arising Under State Law identified in this Article III.D.5 shall be finally decreed as part of the decree of this Compact that will be proposed to the Montana Water Court pursuant to Article VII.B.1.

6. Contract Rights to Stored Water Held by MFWP in Basin 76H (Bitterroot).

a. MFWP is a party to two contracts for the delivery of stored water from Painted Rocks Reservoir: MFWP Water Purchase Contract Painted Rocks, between MFWP and DNRC, July 12, 2004 (attached hereto as Appendix 32); and Water Purchase Contract, March 5, 1958, as amended on March 5, 1958 (attached hereto as Appendix 33). In the event that MFWP obtains an ownership interest in any water rights pursuant to these contracts or obtains an ownership interest in any water rights pursuant to any future contract for the delivery of water from Painted Rocks Reservoir, MFWP shall expeditiously take all steps necessary to add the Tribes as a co-owner of said water rights.

b. MFWP is a party to a contract for the delivery of stored water from Lake Como: Agreement Between the Bitterroot Irrigation District and the United States Department of the Interior, Bureau of Reclamation for the Operation of the Enlarged Storage Pool at Lake Como, July, 1994 (attached hereto as Appendix 34). In the event that MFWP obtains an ownership interest in any water rights pursuant to this contract, or obtains an ownership interest in any water rights pursuant to any future contract for delivery of water from Lake Como, MFWP shall expeditiously take all steps necessary to add the Tribes as a co-owner of said water rights.

c. MFWP shall manage the Painted Rocks and Como contract rights, in a prudent, biologically based and environmentally sound manner, and within the terms and conditions of these contracts. MFWP will manage in

the same manner any future contracts for the delivery of water from Painted Rocks or Lake Como to which MFWP becomes a party. The Tribes are an intended beneficiary of MFWP's management of these contracts, and have the right to challenge MFWP's management decisions in a Court of Competent Jurisdiction.

d. MFWP shall meet and confer with the Tribes on a biennial basis, or on such other timeframe as the Tribes and MFWP may mutually agree to, regarding the management of these contract rights. Such modifications to the meeting schedule are pursuant to, and shall not be deemed an amendment of, this Compact. If the Tribes become co-owners of any water right pursuant to this Article III.D.6 of the Compact, the Tribes and MFWP shall each retain the independent right to exercise each water right as each deems appropriate. Neither the Tribes nor MFWP has any affirmative duty to take any particular action in regard to the exercise of any of such rights. The Tribes do not assume any liability arising out of or resulting from any of the contracts identified in this Article III.D.6 pertaining to co-ownership of rights to stored water in Basin 76H.

7. Instream Flow Right on the North Fork of Placid Creek (Basin 76F). The Tribes have an Instream Flow water right for the upper reach of the North Fork of Placid Creek with the associated flow rates set forth in the abstract of water right attached hereto as Appendix 35. The measurement point for this water right shall be within the main channel of the North Fork of Placid Creek, below the North Fork Placid Creek FIIP Diversion located within the SE 1/4 of the NW 1/4 of the SE 1/4 of Section 29 in Township 17 North Range 16 West.

a. The priority date for this water right is time immemorial.

b. The period of use of this water right is January 1 to December 31 of each year.

c. The purpose of this water right is for the maintenance and enhancement of fish habitat to benefit the instream fishery. This right shall not be changed to any other or additional purpose, changed to consumptive use, or transferred to different ownership.

d. The point of diversion and place of use for this water right is instream. This water right shall not be exercised in conjunction with any artificial diversion.

e. The Tribes, and/or the United States on behalf of the Tribes, shall be entitled to make a Call to enforce this water right only against junior users the purpose of whose rights is irrigation and whose source of supply is surface water of Placid Creek, or against junior users the purpose of whose rights is irrigation, whose source of supply is Groundwater connected to Placid Creek and whose flow rate is greater than 100 gallons per minute.

f. Call may be made only when the average daily flow drops below the enforceable level for the previous 24-hour period.

8. Instream Flow Rights on Kootenai River Tributaries (Basin 76D). The Tribes have Instream Flow water rights for the reaches of the Kootenai River tributaries Big Creek, Boulder Creek, Steep Creek and Sutton Creek, with the associated flow rates set forth in the abstracts of water right attached hereto as Appendix 36.

a. The priority date for this water right is time immemorial.

b. The period of use of this water right is January 1 to December 31 of each year.

c. The purpose of this water right is for the maintenance and enhancement of fish habitat to benefit the instream fishery. This right shall not be changed to any other or additional purpose, changed to consumptive use, or transferred to different ownership.

d. The point of diversion and place of use for this water right is instream. This water right shall not be exercised in conjunction with any artificial diversion.

e. Water rights held by the United States Forest Service pursuant to the United States Forest Service-Montana Water Rights Compact, 85-20-1401, MCA, shall not be subject to Call by the Tribes and/or the United States on behalf of the Tribes.

f. The recognition of the Instream Flow water rights in this Article III.D.8 does not confer on the Tribes any authority over the management of National Forest System lands within Basin 76D, or any claim to ownership or other rights in that land. With the exception of future diversionary uses by the United States on National Forest System lands in excess of the Forest Service's reserved rights identified in Article III.D.8.e, the Tribes hold the United States harmless for delivery of water or maintenance of flows to meet this Instream Flow water right in Basin 76D.

E. Period of Use. The period of use of the Tribal Water Right set forth in this Article III shall be January 1 to December 31 of each year, provided however, that any portion of that water right that is dedicated to seasonal use, including irrigation use, shall have a period of use as set forth in the abstracts attached hereto as Appendix 5 or as set forth in the registration of such right pursuant to the Law of Administration, as applicable.

F. Points and Means of Diversion. The points and means of diversion for use of the Tribal Water Right set forth in this Article III are as set forth in the abstracts of water rights attached to this Compact or as may be provided for under the Law of Administration.

G. Call Protection.

1. Non-Irrigators. The Tribes, on behalf of themselves and the users of any portion of the Tribal Water Right set forth in this Compact, and the United States agree to relinquish their right to exercise the Tribal Water

Right to make a Call against any Water Right Arising Under State Law whose purpose(s) do(es) not include irrigation.

2. Groundwater Irrigators with Flow Rates Less Than or Equal to 100 Gallons Per Minute. The Tribes, on behalf of themselves and the users of any portion of the Tribal Water Right set forth in this Compact and the United States agree to relinquish their right to exercise the Tribal Water Right to make a Call against any Water Right Arising Under State Law whose purpose is irrigation and whose source of supply is Groundwater and whose flow rate is less than or equal to 100 gallons per minute.

3. Irrigators Within the FIIP Influence Area.

a. The Tribes, the United States, and the Project Operator, agree to relinquish their right to exercise the Tribal Water Right to make a Call against that portion of any Water Right Arising Under State Law identified in Article III.G.3.b that is equal to the quantity of water established as the annual FIIP quota for the current irrigation season, or an equivalent farm delivery amount within the FIIP as implemented by the Project Operator within the applicable RDA Area, or the quantity allowed under a claim decreed by the Montana Water Court or water right granted by the DNRC (an Alternate Value), whichever is less, whose owner enters into a consensual agreement as described in this Article III.G.3.

b. Water Rights Arising Under State Law whose owners are eligible to enter into consensual agreements as described in this Article III.G.3 are those rights:

i. whose purpose is irrigation;

ii. whose point(s) of diversion or place(s) of use are within the FIIP Influence Area; and

iii. whose source of supply is surface water; or

iv. whose source of supply is Groundwater and whose flow rate is greater than 100 gallons per minute.

c. The Tribes, the United States, and the Project Operator, agree to enter into the consensual agreement described in this Article III.G.3 with every owner of a Water Right Arising Under State Law described in Article III.G.3.b who wishes to enter into such an agreement. The following conditions shall apply to any such consensual agreement:

i. the owner of a Water Right Arising Under State Law that meets the criteria described in Article III.G.3.b shall measure all diversions, report the measured amount of those diversions to the Project Operator, agree to divert no more water each year than the lesser of the quantity established as the annual FIIP quota or an Alternate Value, and shall not expand water use beyond the terms of the agreement;

ii. the owner of a Water Right Arising Under State Law does not acquire any entitlement to any delivery or diversion of water from the FIIP, whether the water is stored or run of the river, by entering into a consensual agreement as described in this Article III.G.3;

iii. irrigation use pursuant to any Water Right Arising Under State Law whose owner enters into a consensual agreement as set forth in this Article III.G.3 shall be limited to the irrigation season identified annually by the FIIP and to such period of use limitation as may apply to FIIP irrigators;

iv. the method and frequency of measurement of the diversion must be described and occur at a reasonable level of accuracy and frequency to demonstrate that the diversion does not exceed the lesser of the annual FIIP quota for a given irrigation season or an Alternate Value, and;

v. the agreement is permanent and is binding on the heirs and assigns of the owner of each Water Right Arising Under State Law who enters into such agreement.

d. The entering into a consensual agreement as set forth in this subsection (3) does not relieve the owner of any claim to a Water Right Arising Under State Law that is at issue in the Montana general stream adjudication from the obligation of prosecuting that water right claim through the Montana general stream adjudication.

e. If a consensual agreement is entered into among the Tribes, United States, the Project Operator and the owner of a Water Right Arising Under State Law described in Article III.G.3.b prior to the issuance of the final decree for Montana Water Court Basin 76L and 76 LJ, as applicable, that agreement shall terminate as a matter of law if the claimed Water Right is terminated as a result of proceedings conducted in the Montana general stream adjudication.

f. If a consensual agreement is entered into among the Tribes, the United States, the Project Operator, and the owner of a Water Right Arising Under State Law described in Article III.G.3.b prior to the issuance of the final decree for Montana Water Court Basin 76L and 76 LJ, as applicable, and such owner has a claim in the Montana general stream adjudication that is ultimately decreed a quantity of water for that claim less than the quantity established in the agreement, the consensual agreement shall protect only the lesser amount of water.

g. If the owner of a Water Right Arising Under State Law described in Article III.G.3.b ceases to use that portion of that water right in excess of the lesser of the annual FIIP quota for a given irrigation season, or an Alternate Value, pursuant to a consensual agreement as set forth in Article III.G.3:

i. that nonuse does not represent an intent by the owner of that water right to wholly or partially abandon that water right or to not comply with the terms and conditions of that right; and

ii. the period of nonuse may not create or may not be added to any previous period of nonuse to create a presumption of abandonment.

h. Any use of a Water Right Arising Under State Law subject to a consensual agreement described in this Article III.G.3 exceeding the volume of water specified in the consensual agreement shall be subject to Call by the Tribes, the United States, or the Project Operator for that amount of water in excess of the terms of the consensual agreement.

i. A Person who has both an entitlement to the delivery of water from the FIIP and a Water Right Arising Under State Law to serve the same acreage may only protect from Call, by entering into a consensual agreement pursuant to this Article III.G.3, a total quantity of water equal to the lesser of the annual FIIP quota for a given irrigation season, or an Alternate Value, for each acre served, irrespective of whether the water applied to each acre is pursuant to that Person's FIIP delivery right or that Person's Water Right Arising Under State Law.

4. Water Rights Upstream of the Reservation (Basins 76I, 76J, and 76LJ). The Tribes, on behalf of themselves and the users of any portion of the Tribal Water Right set forth in this Compact, and the United States agree to relinquish their right to exercise the Tribal Water Right to make a Call against any water right located upstream of the Flathead Reservation in Basins 76I, 76J, and 76LJ, except for those Water Rights Arising Under State Law:

a. Whose purpose is irrigation and whose source of supply is surface water, and whose point of diversion is:

i. the mainstem of the Flathead River, including Flathead Lake;

ii. the North Fork of the Flathead River;

iii. the Middle Fork of the Flathead River; or

iv. the South Fork of the Flathead River.

b. Whose purpose is irrigation, whose source of supply is Groundwater connected to one of the sources identified in Article III.G.4.a, and whose flow rate is greater than 100 gallons per minute.

c. The Tribes and the United States agree that the Tribal Water Right recognized in the Compact may not be exercised to make Call against any Water Right Arising Under State Law upstream of the Flathead Reservation and located on a tributary to the Flathead River not identified in Article III.G.4.a.

5. Water Rights on the Little Bitterroot River Outside the Reservation (Basin 76L). The Tribes, on behalf of themselves and the users of any portion of the Tribal Water Right set forth in this Compact, and the United

States agree to relinquish their right to exercise the Tribal Water Right to make a Call against any Water Right Arising Under State Law whose point of diversion is outside the Flathead Reservation and whose source of supply is the Little Bitterroot River or its tributaries.

6. Any Water Right Arising Under State Law the purpose of which is irrigation and that is susceptible to Call by the Tribes pursuant to Article III.D.1.g, III.D.2.e, III.D.3.e, III.D.5.a.iv, III.D.7.e, III.G.4.a, or III.G.4.b whose purpose is changed after the Effective Date to something other than irrigation shall remain susceptible to Call pursuant to the terms and conditions of this Compact as though the purpose of the Water Right Arising Under State Law was still irrigation.

H. Water Rights Arising Under State Law Appurtenant to Lands Acquired by the Tribes. For lands acquired by the Tribes within the Reservation, the Tribes have the right to any Water Right Arising Under State Law acquired as an appurtenance to the land. Starting upon the Effective Date of the Compact, the Tribes may file a Trust Transfer form with the Board for any lands acquired by the Tribes with appurtenant Water Rights Arising Under State Law that have been taken into trust by the United States on behalf of the Tribes, as provided in the Law of Administration and the water right appurtenant to the land shall be transferred to the Tribal Water Right quantified in this Compact with a priority date of July 16, 1855, provided that the Tribes shall continue to use the acquired water right as it was historically used or may change the use of the acquired water right pursuant to the provisions for change of use set forth in Article IV.B.4 and the Law of Administration. Such transfer does not shield the underlying right from abandonment based on acts or omissions of the holder of that water right prior to its acquisition by the Tribes.

## ARTICLE IV - IMPLEMENTATION OF COMPACT

A. Trust Status of Tribal Water Right. The Tribal Water Right shall be held in trust by the United States for the benefit of the Tribes, their members and Allottees.

B. Use of Tribal Water Right.

1. Persons Entitled to Use the Tribal Water Right. The Tribal Water Right may be used by the Tribes, their members, Allottees, or their lessees or assigns. FIIP customers who have assessed land within the FIIP who are in compliance with the applicable BIA rules and guidelines are entitled to have delivered an equitable share of the FIIP Water Use Right as provided by Article IV.D.2.

2. Effect of Non-Use of the Tribal Water Right. Non-use of all or any portion of the Tribal Water Right described in Article III shall not constitute a relinquishment, forfeiture, or abandonment of such right.

3. Review of Registration of Existing Uses of the Tribal Water Right.

a. Within five (5) years after the Effective Date, the Board shall provide the DNRC with a report, in a form materially consistent with that of abstracts of water rights decreed by the Montana Water Court, of the Tribal Water Right registered pursuant to the Law of Administration as being in existence as of the Effective Date.

b. Within six (6) months after receipt of the report, the DNRC must agree, agree in part, or disagree with the report. If the DNRC takes no action by the end of the six-month period after the report is received, the report shall be deemed accepted. If the DNRC agrees in part or disagrees with the report, the State, the Tribes, and the United States shall meet within ninety (90) days of issuance of the DNRC's notice of disagreement in an effort to resolve the issue(s) giving rise to the disagreement. If, after meeting and conferring, the State, the Tribes, and the United States are still unable to come to agreement on the list of Existing Uses, all disagreements over the contents of the list must be brought to the Water Management Board for resolution of the dispute under Article IV.I.4.c within 180 days of the issuance of the DNRC's notice of disagreement.

4. Changes in Use of the Tribal Water Right. Any user of a portion of the Tribal Water Right who proposes a change of such use must seek authorization to change the use of that portion of the right. Such applications for authorization to change a use shall be heard and decided by the Board pursuant to Article IV.I.4.b of the Compact and the Law of Administration, provided that the Board may not consider any change application of Flathead System Compact Water unless the applicant has secured the written consent of the Tribal Council to apply for a Change in Use authorization.

5. New Development of the Tribal Water Right.

a. The Tribes, or any Person with authorization from the Tribes, may develop a new use of the Tribal Water Right on the Reservation after the Effective Date. Such development may only proceed upon the issuance of an Appropriation Right for the New Development by the Board pursuant to Article IV.I.4.a and the Law of Administration.

b. The Tribes, or any Person with authorization from the Tribes, may develop a new use of the Flathead System Compact Water Right set forth in Article III.C.1.c off the Reservation after the Effective Date, but only after complying with the provisions of Article IV.B.5.c.

c. Any New Development by the Tribes of a portion of the Tribes' Flathead System Compact Water Right off the Reservation shall be treated as a change in use. The DNRC shall process each change application pursuant to the provisions of 85-2-302, 85-2-307 through 85-2-310, and 85-2-314, MCA. Prior to developing

Flathead System Compact Water for beneficial use off the Reservation, the Tribes must comply with the provisions of subsections (1) through (3) and (8) through (17) of 85-2-402, MCA, as those provisions read on December 31, 2014.

d. In the event that, after the date the ratification of the Compact by the Montana Legislature takes effect under State law, the Montana Legislature substantively amends or repeals any of the sections identified in Article IV.B.5.c, the Tribes and the DNRC shall meet no later than 60 days after the effective date of the State legislative action amending or repealing to determine if they can agree whether the provisions of State law set forth in Article IV.B.5.c or the new provisions of State law shall govern the process for off-Reservation development of new uses of the Flathead System Compact Water Right set forth in Article III.C.1.c. In the event that the Tribes and the DNRC are unable to agree, the provisions of State law identified in Article IV.B.5.c shall remain in effect. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact

e. If the Tribes' use of Flathead System Compact Water off the Reservation involves diversion works or facilities for the transport of water located off the Reservation, the Tribes shall apply for and obtain all permits, certificates, variances and other authorizations required by State laws regulating, conditioning or permitting the siting, construction, operation, alteration or use of any equipment, device, facility or associated facility proposed to use or transport water, prior to exercising a use of the Flathead System Compact Water Right off the Reservation.

6. Lease of the Tribal Water Right.

a. Lease of the Tribal Water Right generally.

i. Pursuant to the terms and conditions of this Compact, the Tribes may Lease, for use on or off the Reservation, any portion of the Tribal Water Right set forth in Article III.C.1.a, b, i, and j; provided, that either the Tribes or its assignee, on behalf of the Tribes, first comply with the procedures for changing the use of water rights set forth in subsections iii and iv of this Article IV.B.6.a, as applicable.

ii. The Tribes may make or authorize a Lease of the Tribal Water Right for use within or outside the Reservation; provided that, any Lease shall be for a term not to exceed 99 years, and may include provisions authorizing renewal for an additional term not to exceed 99 years. The off-Reservation use of any portion of the Tribal Water Right is limited to a place of use within the Flathead or Clark Fork River Basins in Montana.

iii. A Lease of the Tribal Water Right shall not adversely affect a Water Right Arising Under State Law with a priority date before the date of the Lease or an Appropriation Right issued pursuant to this Compact with

a priority date before the date of the Lease. Uses of the Tribal Water Right being exercised prior to the date of the Lease shall not be adversely affected by a Lease of the Tribal Water Right, except that the Tribes may allow uses of the Tribal Water Right on Tribally owned land to be adversely affected by declining to object to the Change in Use application associated with the Lease.

1. If the Lease is for use on the Reservation, the determination of adverse effect shall be made by the Water Management Board pursuant to the process set forth regarding applications for Change in Use authorizations under the Law of Administration.

2. If the Lease is for use off the Reservation, the Lease shall be treated as a change in use. The DNRC shall process each change application pursuant to the provisions of 85-2-302, 85-2-307 through 85-2-310, and 85-2-314, MCA. Prior to the lessee putting leased water to beneficial use, the Tribes or their assignee, on behalf of the Tribes, must comply with the following provisions of State law as those provisions read on December 31, 2014:

a. Subsections (1) through (3) and (8) through (17) of 85-2-402, MCA;

b. Subsections (1) through (8) of 85-2-407, MCA, provided, that the term of any such Lease may be for up to 99 years, and the DNRC may approve the renewal of such a Lease for a period of up to 99 years; and

c. 85-2-408, MCA, as limited by the provisions of Article IV.B.6.a.iii.2.a.

iv. In the event that, after the date the ratification of the Compact by the Montana Legislature takes effect under State law, the Montana Legislature substantively amends or repeals any of the sections identified in Article IV.B.6.a.iii.2, the Tribes and the DNRC shall meet, no later than 60 days after the effective date of the State legislative action amending or repealing, to determine if they can agree whether the provisions set forth in Article IV.B.6.a.iii.2 or the new provisions of State law shall govern the process for off-Reservation Leases under this Compact. In the event that the Tribes and the DNRC are unable to agree, the provisions of Article IV.B.6.a.iii.2 shall remain in effect. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

v. The Tribes or any Person using diversion works or facilities for the transportation of water located off the Reservation in connection with a use of the Tribal Water Right shall apply for and obtain all permits, certificates, variances and other authorizations required by State laws regulating, conditioning or permitting the siting, construction, operation, alteration or use of any equipment, device, or facility proposed to use or transport water, prior to exercising a use of the Tribal Water Right off the Reservation.

b. Lease of the Tribal Water Right by an Individual Indian Owner.

i. An Individual Indian Owner may enter into a Lease to authorize a Person or Persons to use the Individual Indian Owner's allocated portion of the Tribal Water Right on the Reservation.

ii. If the lessee intends to put the water to beneficial use in a manner different than how the Individual Indian Owner had been using the water prior to the date of the Lease, the Individual Indian Owner or the lessee must comply with the provisions of the Law of Administration pertaining to securing Change in Use authorizations from the Water Management Board before the use of water may be changed.

iii. Any Lease entered into pursuant to subsection b of this section may be for a term not to exceed 25 years, and may include provisions authorizing renewal for an additional term not to exceed 25 years.

iv. A Lease of the Tribal Water Right by an Individual Indian Owner shall not adversely affect a Water Right Arising Under State Law with a priority date before the date of the Lease or an Appropriation Right issued pursuant to this Compact with a priority date before the date of the Lease. Uses of the Tribal Water Right being exercised prior to the date of the Lease shall not be adversely affected by a Lease of the Tribal Water Right by an Individual Indian Owner, except that the Tribes may allow uses of the Tribal Water Right on Tribally owned land to be adversely affected by declining to object to the Change in Use application associated with the Lease.

c. Lease of the Flathead System Compact Water Right.

i. Pursuant to the terms and conditions of this Compact, the Tribes may Lease Flathead System Compact Water for use on or off the Reservation, provided that either the Tribes or their lessee comply with the Law of Administration and the relevant provisions of this section, as applicable.

ii. The Tribes shall make available Flathead System Compact Water for short-term Lease within the FIIP or the FIIP Influence Area pursuant to the Shared Shortages provisions set forth at Article IV.E. The Lease term may not exceed the period during which Shared Shortage provisions are in effect. The baseline annual price for this water shall be $8 per Acre-foot plus a $25 administrative fee per Lease as of July 1, 2015. From that date, the baseline annual price and the administrative fee shall be indexed for inflation and consequently adjusted annually on July 1st of each successive year thereafter (the Adjustment Date) by the percentage change over the previous twelve months in the most recent monthly Consumer Price Index for All Urban Consumers (CPI-U) published by the United States Department of Labor, Bureau of Labor Statistics, or such other index as the Parties may agree to use. The initial price for each Lease of any portion of the Flathead System Compact Water entered into during that year pursuant to the Shared Shortage provisions contained in Article IV.E shall be the

adjusted baseline price. During the term of any given Lease, the price per Acre-foot shall continue to adjust annually on the Adjustment Date by the percentage change in the CPI-U, or such other index as the Parties may agree to use, of the previous twelve-month period. The foregoing provisions regarding the adjusted baseline price and per-Lease administrative fee shall constitute the sole and exclusive price terms of each Lease entered under this Article IV.B.6.c.ii. Any modifications of the index are pursuant to, and shall not be deemed an amendment of, this Compact.

iii. The Tribes may make or authorize a Lease of the Tribal Water Right for use within or outside the Reservation; provided that, any Lease shall be for a term not to exceed 99 years, and may include provisions authorizing renewal for an additional term not to exceed 99 years. The off-Reservation use of any portion of the Tribal Water Right is limited to a place of use within the Flathead or Clark Fork River Basins in Montana.

iv. If the Lease is for a portion of the Tribes' Flathead System Compact Water right to be delivered wholly from water stored in Hungry Horse Reservoir, the Tribes shall provide notice to the DNRC and the Water Management Board, in advance of the effective date of the Lease, of the terms of the Lease and any modifications thereto or termination thereof. For Leases lasting one irrigation season or less, notice to the DNRC and the Water Management Board shall be provided as far in advance as practicable. For Leases lasting longer than one year, notice shall be provided to the DNRC and the Water Management Board by the later of 120 days prior to the date on which the Lease is to take effect or March 31 of the year in which the Lease is to take effect. The point of delivery for a Lease shall be the outlet works at the Hungry Horse Dam. If disputes arise between or among holders of Water Rights Arising Under State Law as to the reasonable transmission and carriage losses from the point of delivery to the place of use of the Lease, the district court pursuant to its powers and duties under Title 85, Chapter 5, MCA, shall calculate such losses.

v. Any Lease or portion of a Lease to be delivered from water stored in Hungry Horse Reservoir is subject to reduction due to conditions defined in Appendix 8 on a pro rata basis as set forth in Article III.C.1.c.iii.

vi. If the Lease is for the off-Reservation use of a portion of the Tribes' Flathead System Compact Water right to be delivered from a combination of stored water and direct flow water from the Flathead River, or exclusively from direct flow water from the Flathead River, the Lease shall be treated as a change in use as it pertains to the use of the direct flow water. The DNRC shall process each change application pursuant to the provisions of 85-2-302, 85-2-307 through 85-2-310, and 85-2-314, MCA. Prior to the lessee putting leased water to beneficial use, the Tribes or the lessee must comply with the following provisions of State law as those

provisions read on December 31, 2014:

1. Subsections (1) through (3) and (8) through (17) of 85-2-402, MCA;

2. Subsections (1) through (8) of 85-2-407, MCA, provided, however, that the term of any such Lease may be for up to 99 years, and the DNRC may approve the renewal of such a Lease for a period of up to 99 years; and

3. 85-2-408, MCA, as limited by the provisions of Article IV.B.6.c.vi.1.

vii. In the event that, after the date the ratification of the Compact by the Montana Legislature takes effect under State law, the Montana Legislature substantively amends or repeals any of the sections identified in Article IV.B.6.c.vi.1 through 3, the Tribes and the DNRC shall meet no later than 60 days after the effective date of the State legislative action amending or repealing to determine if they can agree whether the provisions set forth in Article IV.B.6.c.vi.1 through 3 or the new provisions of State law shall govern the process for off-Reservation Leases under this Compact. In the event that the Tribes and the DNRC are unable to agree, the provisions of Article IV.B.6.c.vi.1 through 3 shall remain in effect. Any agreed upon modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

viii. The Tribes or any Person using diversion works or facilities for the transportation of water located off the Reservation in connection with a use of the Flathead System Compact Water Right shall apply for and obtain all permits, certificates, variances and other authorizations required by State laws regulating, conditioning or permitting the siting, construction, operation, alteration or use of any equipment, device, or facility proposed to use or transport water, prior to exercising a use of the Flathead System Compact Water Right off the Reservation.

7. Lease of 11,000 Acre-Feet per Year of Water From Hungry Horse Reservoir for Off-Reservation Mitigation.

a. The Tribes shall make available for Lease off the Reservation 11,000 Acre-feet of the water identified in Article III.C.1.c.i stored in Hungry Horse Reservoir pursuant to the process, and subject to the terms and conditions, set forth in this Article IV.B.7.

b. The water identified in Article IV.B.7.a shall be available for the mitigation of net depletions arising from new or existing domestic, commercial, municipal and/or industrial uses of water at any point in the Flathead or Clark Fork Basins in Montana for which the 11,000 Acre-feet per year of water is capable of providing mitigation.

c. The DNRC, under Title 85, MCA, shall retain the responsibility for determining if, when, where, and

how much mitigation water is needed for any proposed new development and if the water identified in Article IV.B.7.a meets the appropriate mitigation criteria for any proposed mitigation plan.

d. The water identified in Article IV.B.7.a is subject to reduction due to conditions defined in Appendix 8 on a pro rata basis as set forth in Article III.C.1.c.iii.

e. The mechanism for entering into a Lease for any portion of the water set forth in this Article IV.B.7.a shall be as follows:

i. Any interested Person may approach the Tribes, through the Tribal Lands Department or successor Tribal department, to negotiate a Lease of a portion of this water;

ii. The baseline annual per Acre-foot price for this water shall be set at $40 as of July 1, 2015. From that date, the baseline price shall be indexed for inflation and consequently adjusted annually on July 1st of each year thereafter (the Adjustment Date) by the percentage change over the previous year in the most recent monthly Consumer Price Index for All Urban Consumers (CPI-U) published by the United States Department of Labor, Bureau of Labor Statistics, or such other index as the Parties may agree. The initial price for each Lease of any portion of the 11,000 Acre-feet identified in this Article IV.B.7 entered into during that year shall be the adjusted baseline price. During the term of any given Lease, the price per Acre-foot shall continue to adjust annually on the Adjustment Date by the percentage change in the CPI-U, or such other index as the Parties may agree to use, of the previous twelve-month period. The foregoing provisions regarding the adjusted baseline price shall constitute the sole and exclusive price term of each Lease;

iii. Each Lease between the Tribes and a lessee shall be for a term of 99 years, with the lessee holding an option to renew for an additional 99 years, unless the Tribes and the lessee affirmatively agree on an alternate duration not to exceed 99 years. Any Lease including a term of alternate duration may also include an option to renew for a term not to exceed 99 years; and

iv. The Tribes and each prospective lessee shall negotiate any and all other non-price terms of the Lease arrangement.

f. In the event of an impasse between the Tribes and a prospective lessee over any non-price term, the prospective lessee may file a notice of impasse with the Water Management Board, invoking the Board's authority to resolve any such impasse pursuant to the process set forth in Article IV.B.7.g.

g. Process for resolving disputes over Lease terms.

i. Upon receipt of a notice of impasse, the Board shall date stamp it. Within three days of the filing of a

notice of impasse, the Board shall provide notice of the filing to the Tribes, with a copy to the prospective lessee, identifying a date certain between 30 and 60 days from the date of receipt of the notice for the Tribes and the prospective lessee each to submit a last, best offer concerning all of the non-price terms.

ii. No later than the date set by the Board, the Tribes and the prospective lessee shall file a last, best offer with the Board in the form of a proposed Lease agreement and shall serve the same on each other. To be filed, the offer must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing. Immediately upon receipt by the Board, the offers shall be date stamped. If the Tribes fail to timely file an offer, the offer filed by the prospective lessee shall become the terms of the Lease. If the prospective lessee fails to timely file an offer, no Lease shall be concluded.

iii. The Board shall issue a decision selecting one side's offer or the other's between 15 and 45 days after the filing of the offer. At any time prior to the Board's decision, the prospective lessee may choose to withdraw the prospective lessee's offer and decline to enter into the Lease.

iv. The Board shall provide notice of its decision to both the Tribes and the prospective lessee. The Lease shall be concluded on the terms selected by the Board, but must include the price term identified in Article IV.B.7.e.ii of this Compact. The effective date of the Lease shall be ten days after the Board's issuance of its decision.

v. The Tribes or a prospective lessee dissatisfied with a decision of the Board made pursuant to this Article IV.B.7.g may appeal that decision by filing a petition for judicial review with a Court of Competent Jurisdiction within 30 days of the issuance of the Board's decision. The court shall review the Board's decision for abuse of discretion.

C. Exercise of Certain Portions of the Tribal Water Right Related to the FIIP.

1. Priority for the Exercise of the FIIP Instream Flow and FIIP Water Use Rights. Once the water rights described in Article III.C become enforceable, the following relative priorities among those rights shall apply:

a. Minimum Enforceable Instream Flows.

b. Minimum Reservoir Pool Elevations.

c. River Diversion Allowances.

d. Target Instream Flows.

2. Reallocated Water in excess of Target Instream Flows will be split as equally as hydrologically

practicable between the Instream Flow water rights set forth in Article III.C.1.d.ii and the FIIP Water Use Right set forth in Article III.C.1.a.

3. MEF and TIF implementation and schedule. Exercise of FIIP Instream Flow Rights set forth in Article III.C.1.d.ii shall be accomplished through the implementation and enforcement of MEFs and TIFs and is subject to the Shared Shortage and Adaptive Management provisions set forth in Article IV.E and F and Appendix 3.5.

a. MEFs and TIFs shall be enforceable at the values set forth in Appendix 3.1.

b. Implementation and enforceability of MEFs and TIFs.

i. Incremental implementation of Operational Improvements will result in additional FIIP Instream Flow.

ii. MEFs and TIFs shall be enforceable following the completion of Operational Improvements according to the schedule attached hereto as Appendix 3.4.

iii. Reallocated Water from Rehabilitation and Betterment Projects shall be used to incrementally achieve FIIP Instream Flows set forth in Article III.C.1.d.ii.

iv. If the schedule attached hereto as Appendix 3.4 cannot be met due to lack of available funding or other circumstances outside of the control of the Parties or Project Operator, the Parties may agree to adjust the schedule as necessary to allow for timely implementation of MEFs and TIFs. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

v. If the Project Operator fails to implement the schedule attached hereto as Appendix 3.4 due to acts, errors, or omissions of the Project Operator, MEFs and TIFs will be enforceable as though the schedule had been implemented.

c. Until an MEF has become enforceable, the interim Instream Flow, where applicable, for that location shall be the enforceable Instream Flow. Where the Instream Flow has been incrementally increased above the interim Instream Flow level as a result of the partial completion of actions listed in the Implementation Schedule attached hereto as Appendix 3.4, the incrementally achieved level may be maintained until the MEF is achieved.

d. Until a Minimum Reservoir Pool Elevation has become enforceable, the interim reservoir pool elevation, where applicable, for that location shall be enforced.

e. TIFs shall be determined seasonally according to Appendix 3.5, and will vary between the wet and normal year levels attached hereto as Appendix 3.1.

4. Minimum Reservoir Pool Elevations. Minimum Reservoir Pool Elevations attached hereto as Appendix 3.1 shall be enforceable according to the schedule specified in Appendix 3.4. Enforceability of Minimum Reservoir

Pool Elevations is subject to Article IV.E, Appendix 3.5, and superseding Federal law allowing for regulation of reservoir elevations.

D. Exercise of the FIIP Water Use Right.

1. FIIP Water Use Right.

a. The FIIP Water Use Right shall be satisfied by meeting the RDA values for each RDA Area attached hereto as Appendix 3.2 and as evaluated pursuant to Article IV.D.1.e.

b. RDAs shall be enforceable according to the schedule attached hereto as Appendix 3.4, subject to evaluation pursuant to Article IV.D.1.e.

c. Headworks diversion amounts shall be progressively adjusted to achieve the RDAs as Operational Improvements are completed pursuant to Appendix 3.4.

d. Once RDAs are achieved through completion of Operational Improvements, headworks diversion amounts shall be progressively adjusted as Rehabilitation and Betterment is completed pursuant to Appendix 3.6. The enforceable RDA for the location in which a particular Rehabilitation and Betterment project has been completed is the amount defined in Appendix 3.2, reduced by the volume of Reallocated Water made available by that Rehabilitation and Betterment project. The amount actually diverted may be adjusted pursuant to the evaluation process described in Article IV.D.1.e.

e. RDA values shall be evaluated to ensure their adequacy to meet Historic Farm Deliveries. Initial evaluation of RDAs shall occur once the Parties and Project Operator have completed all Operational Improvements in a given RDA Area according to the schedule attached hereto as Appendix 3.4. Evaluation of RDAs will continue as part of the responsibilities of the CITT described in Appendix 3.5 as follows:

i. The Project Operator must measure and record farm turnout deliveries within a given RDA Area.

ii. If the aggregate measured deliveries to farm turnouts do not meet Historic Farm Deliveries for a given RDA Area, actual diversions shall be adjusted to assure that Historic Farm Deliveries are met for wet, normal and dry water years. If water in excess of the RDA is needed to meet Historic Farm Deliveries, it will be provided through an increase of the Flathead River pumping plant diversion allowed by the Flathead Pumping Station RDA attached hereto as Appendix 3.2. If the aggregate measured deliveries to farm turnouts exceed Historic Farm Deliveries within an RDA Area, the actual diversions shall be reduced accordingly.

iii. Any adjustment of actual diversions pursuant to this section shall not result in decrease of the MEFs, TIFs, or Minimum Reservoir Pool Elevations.

f. RDAs are quantified for wet, normal, and dry Natural Flow years, attached hereto as Appendix 3.2, and shall be set each year according to the process specified in Appendix 3.5.

2. FIIP Delivery Entitlement Statement. Assessed land within the FIIP is entitled to have water delivered by the Project Operator if the FIIP customer is in compliance with the applicable BIA rules and guidelines for FIIP. Beginning on the Effective Date, an owner of assessed land within the FIIP may request of the Project Operator a delivery entitlement statement, which must be tendered within 90 days of the request or denied for cause. Beginning on the date one year after the Effective Date, the delivery entitlement statement must be tendered or denied within 30 days. The delivery entitlement runs with the land and is valid so long as the land remains assessed and the FIIP customer is in compliance with the applicable BIA rules and guidelines for FIIP.

E. Shared Shortages Provision.

1. In the event that water supplies are inadequate to simultaneously satisfy an enforceable Instream Flow water right and a corresponding RDA, the provisions of Article IV.E govern the exercise of the water rights set forth in Articles III.C.1.a and III.C.1.d.ii and iv at that location. The CITT shall determine when Shared Shortages conditions begin and end as specified in Appendix 3.5.

2. For purposes of Article IV.E, once MEFs and RDAs have become enforceable, they shall be maintained at the levels set forth in Appendices 3.1 and 3.2, as adjusted pursuant to Article IV.D.1.e. Prior to enforceability of the MEF and RDA levels attached hereto as Appendices 3.1 and 3.2, Instream Flows will be maintained as provided by Article IV.C.3.c and RDAs will be maintained as provided by Article IV.D.1.b and c.

3. Subject to the priority system set forth in Article IV.C.1, RDAs shall be maintained by implementing the following measures in the order of priority set forth below:

a. Available Natural Flow or regulated streamflow shall be diverted by the Project Operator to satisfy RDAs.

b. If the application of Article IV.E.3.a does not satisfy RDAs, Flathead River pumping plant diversions shall be increased as allowed by the Flathead Pumping Station RDA attached hereto as Appendix 3.2.

c. If the application of Article IV.E.3.a and b does not satisfy RDAs, FIIP reservoirs may be reduced below the Minimum Reservoir Pool Elevations specified in Appendix 3.1 to supply RDAs, subject to Article IV.E.5.

d. If the application of Article IV.E.3.a through c does not satisfy RDAs, the Tribes shall make available for short-term lease Flathead System Compact Water for use within the FIIP as provided by Article IV.B.6.c.ii.

4. Within the Basin 76LJ portion of the Little Bitterroot Valley, RDAs shall be maintained by sequentially

applying the procedures in Article IV.E.3.a through c, where applicable.

5. As set forth in Article IV.E.3.c, FIIP reservoirs may be reduced below the Minimum Reservoir Pool Elevations set forth in Article III.C.1.e to support RDAs as follows:

a. FIIP reservoirs may be reduced pursuant to this section for no more than four consecutive years.

b. Article IV.E.3.c does not apply to Mission Reservoir.

c. FIIP reservoirs may not be reduced below the interim reservoir pool elevations set forth in Article III.C.1.e.iv and attached hereto as Appendix 13.

d. RDAs may be met from carryover reservoir storage, at the discretion of the Project Operator.

F. Requirement to Implement Adaptive Management and Water Measurement.

1. The Parties agree that Adaptive Management and a comprehensive water measurement program, as described in Appendix 3.5, are essential to the successful implementation of this Compact.

2. The Parties, upon mutual written agreement, and in conformance with the Compact and other applicable provisions of law, may amend Appendix 3.5. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

G. Compact Implementation Technical Team. Within six months of the date the ratification of the Compact by the Montana Legislature takes effect under State law, the Parties shall establish a Compact Implementation Technical Team (CITT) to allow planning for and implementation of Operational Improvements, Rehabilitation and Betterment, and Adaptive Management prior to and following the Effective Date.

1. The CITT membership shall be as provided for in Appendix 3.5.

2. The CITT shall carry out the duties specified by Appendix 3.5.

3. The CITT shall develop criteria for prioritizing and selecting projects.

4. Public Meetings and Records:

a. All regularly scheduled meetings of the CITT shall be open to the observation of the general public pursuant to State and Tribal open meeting laws. Where there is a conflict of laws, the law that provides for greater openness to the public applies.

b. CITT records are public records and shall be made available to the public for inspection under such reasonable terms and conditions as the CITT shall establish.

5. Disputes Related to the Compact Implementation Technical Team. The Parties agree to perform each obligation set forth in this Compact in good faith and with diligence and loyalty to this agreement. The Parties shall

form a Compact Management Committee (CMC) comprised of the Director of the Montana Department of Natural Resources, the Chairman of the Tribal Council, and the Regional Director of the Northwest Region of the Bureau of Indian Affairs or their designees. The CMC will provide policy and administrative oversight of the CITT.

a. The CITT shall attempt to reach consensus on all of its actions.

b. Where consensus is not achieved, the CITT will resolve disputed issues by majority vote.

c. If the CITT vote results in a tie, or is appealed, the disputed issue will be referred to the CMC. The CMC will review and attempt to reach consensus on the disputed issue and if consensus is not possible, will resolve the issue by majority vote.

d. A majority vote of the CMC may be appealed using the following procedures:

i. Disputes arising out of any act, failure to act, error or omission of the BIA or Project Operator involving Operational Improvements or Rehabilitation and Betterment or otherwise affecting real property owned by the United States may be appealed under Title 25, Part 2, Code of Federal Regulations.

ii. For disputes raising questions of Compact interpretation, the CMC shall immediately seek a determination of those questions from the Water Management Board, which determination will be provided in writing within 30 days.

iii. All other disputes may be appealed to a Court of Competent Jurisdiction. In considering a petition for relief, a Court of Competent Jurisdiction will review the CMC's legal conclusions for correctness and its factual findings for abuse of discretion.

H. Power Provisions

1. Low-Cost Block of Power

The Parties recognize that Article 40 of the Kerr Project License, as amended, jointly issued to the Montana Power Company and the Tribes for the Kerr Project, Project No. 5, requires Montana Power Company, through its successor-in-interest, NorthWestern Energy, to make available the capacity and energy up to 3.734 megawatts at up to 100 percent load factor during the months of April through October to the United States, for and on behalf of the FIIP, at the rates set forth in and adjusted in accordance with such Article.

The Parties agree that the Kerr Project License Article 40 Low Cost Block of Power is equivalent to the delivery of 19,178,000 kilowatt hours of electricity per year, and generally supplies electricity necessary to pump approximately 46,000 Acre-feet of water per year to the FIIP. If the operation and maintenance, and all other rights and responsibilities for the Kerr Project are assumed by the Tribes or their wholly-owned corporation, the

Tribes agree, to the extent permitted under applicable license(s) and Federal law, to make the Low Cost Block of Power available in the same manner and at the same rates, as adjusted, as NorthWestern Energy. If the Tribes seek a new license for the Kerr Project, the Tribes or their wholly-owned corporation, agree that their license application will request authority from FERC to make the Low Cost Block of Power available in the same manner and at the same rates, as adjusted, as NorthWestern Energy.

2. Net Power in Excess of Low Cost Block

For purposes of Article IV.E, power required to run the Flathead Pumping Station in excess of the Low Cost Block of Power identified in Article IV.H.1 shall be purchased at the price at which Mission Valley Power sells power for irrigation purposes.

3. Net Power Revenues

The State and Tribes agree to seek provisions in the Federal legislation ratifying this Compact for Mission Valley Power to budget annually for an anticipated amount of $200,000 of Net Power Revenues to be made available in the subsequent year to meet the needs of both the power system and the FIIP with an initial allocation of the Net Power Revenue that provides fifty percent to the Project Operator and fifty percent to the Tribes. These funds shall only be used for work on the FIIP that has significant fisheries, water conservation, or water management benefits. If on an annual basis such work by the Project Operator or the Tribes does not require the full amount of such net revenues the remainder shall be set aside and accumulated for future expenditure for these purposes. This initial allocation may be changed by mutual agreement of the Parties within nine (9) years of the Effective Date, with any subsequent agreement to become effective on the tenth (10th) anniversary of the Effective Date. Any such modification is pursuant to, and shall not be deemed an amendment of, this Compact.

I. Administration: Establishment of Flathead Reservation Water Management Board.

1. Establishment of Board. There is hereby established the Flathead Reservation Water Management Board. Upon the Effective Date, the Board shall be the exclusive regulatory body on the Reservation for the issuance of Appropriation Rights and authorizations for Changes in Use of Appropriation Rights and Existing Uses, and for the administration and enforcement of all Appropriation Rights and Existing Uses. The Board shall also have exclusive jurisdiction to resolve any controversy over the meaning and interpretation of the Compact on the Reservation, and any controversy over the right to the use of water as between the Parties or between or among holders of Appropriation Rights and Existing Uses on the Reservation except as explicitly provided otherwise in Article IV.G.5. The jurisdiction of this Board does not extend to any water rights whose place of use

is located outside the exterior boundaries of the Reservation.

2. Membership.

a. Voting Members. The Board shall consist of five voting members: two members selected by the Governor of the State pursuant to Article IV.I.2.b, after consultation with holders of Water Rights Arising Under State Law located on the Reservation; two members appointed by the Tribal Council; and one member selected by the other four members. All members shall be appointed within six months of the Effective Date.

b. Appointment by Governor. Within 90 days of the Effective Date, or 15 days of any vacancy in one or more of the Board positions selected by the Governor, the commissioners of each county whose boundaries include any portion of the Reservation shall nominate individuals for the Governor's consideration for appointment to the Board as follows:

i. The Commissioners of Lake County shall choose five (5) nominees;

ii. The Commissioners of Sanders County shall choose three (3) nominees;

iii. The Commissioners of Missoula County shall choose two (2) nominees;

iv. The Commissioners of Flathead County shall choose one (1) nominee; and

v. Each nominee must meet the eligibility requirements of Article IV.I.2.f.

The Governor shall choose two Board members from the group of nominees. If the county commissioners fail to nominate a minimum of seven (7) individuals for selection by the Governor within the time set forth in Article IV.I.2.b, the Governor may select any two individual(s) who meet the eligibility requirements set forth in Article IV.I.2.f after consultation with Holders of Water Rights Arising Under State Law located on the Reservation.

c. Should the four appointed members fail to agree on the selection of a fifth voting member within sixty days of the date of appointment of the fourth member, or within thirty days after any vacancy in that fifth position occurs, the following procedure shall be utilized:

i. Within five days thereafter the two members appointed by the Tribal Council shall nominate three individuals to serve as a member of the Board and the two members appointed by the Governor shall nominate three individuals to serve as a member of the Board;

ii. Within fifteen days thereafter the two members appointed by the Tribal Council shall reject two of the individuals nominated by the two members appointed by the Governor, and the two members appointed by the Governor shall reject two of the individuals nominated by the two members appointed by the Tribal Council; and

iii. Within five days thereafter, the remaining two nominees shall be submitted to the Chief Judge of the

United States District Court for the District of Montana for selection of the fifth member of the Board.

d. Ex Officio Member. The Board shall also have a sixth, non-voting member appointed by the Secretary.

e. Term. Initially, three voting members of the Board shall serve for four years, and two shall serve for two years. One member appointed by the Governor, one member appointed by the Tribal Council and the fifth voting member shall serve for four years. One member appointed by the Governor and one member appointed by the Tribal Council shall serve for two years. The member appointed by the Secretary shall be appointed for four years. At the expiration of the initial two-year appointments, all subsequently appointed Board members shall serve four year terms.

f. Eligibility. To be eligible to serve on the Board, an individual must be over 18 years of age and be a Reservation resident. For the purposes of filling a position on the Water Management Board, a Reservation resident is an individual who:

i. does business within Flathead Indian Reservation boundaries;

ii. is domiciled within Flathead Indian Reservation boundaries; or

iii. owns and maintains a seasonal residence within Flathead Indian Reservation boundaries.

An eligible individual must also have education and experience in one or more of the following fields: natural resources management, public administration, agriculture, engineering, commerce or finance, hydrology, biological sciences, water law or water policy.

No elected official of the State of Montana, or any political subdivision thereof, or of the United States, or of the Tribes is eligible for nomination to the Board while holding such elective office. However, a nominee for Board membership shall not be disqualified by reason of the fact that he or she is an employee or contractor of the State of Montana or any political subdivision thereof, or of the Tribes, or of the United States.

No Board member may vote on any application or appeal that the member participated in personally and substantially in any non-Board capacity.

g. Vacancies. Subject to the provisions of Article IV.I.2.a and c regarding the filling of a vacancy of the fifth member of the Board, upon the occurrence of any other vacancy in a Board position, the Tribal Council, if the vacancy is in a position appointed by the Tribal Council, or the Governor, if the vacancy is in a position appointed by the Governor, shall name a new Board member within 30 days of the occurrence of the vacancy. Should Board action be required during the period of any such vacancy, the Department Head of the Tribal Natural Resources Department, if the vacancy is in a position appointed by the Tribal Council, or the Director of

the DNRC, if the vacancy is in a position appointed by the Governor, shall fill the vacant position on an acting basis until a new appointment is made.

h. Compensation and Expenses of the Board. Each Board member shall receive such compensation for services and reimbursement for expenses for attendance at Board meetings as shall be fixed by the State and the Tribal Council for the Board members appointed by the same. The compensation for the fifth Board member shall be set jointly by the State and the Tribal Council. The expenses of the Federal ex officio member shall be covered by the United States.

3. Quorum and Vote Required. Four Board members appointed pursuant to Article IV.I.2.a shall constitute a quorum. No Board action may be voted upon in the absence of a quorum. All Board decisions shall be by affirmative vote of a majority of the Board, except as set forth in Article IV.I.5.d for the appointment of water commissioners. If a proposal put to a vote of a quorum of Board members ends in a tie vote, the proposal is deemed disapproved or denied.

4. Jurisdiction of the Board.

a. Issuance of Appropriation Rights. Upon the Effective Date, the Board shall have exclusive jurisdiction over the issuance of all new Appropriation Rights on the Reservation. The process for the consideration, issuance or denial of all Appropriation Rights is set forth in the Law of Administration.

b. Authorizations for Changes in Use. Upon the Effective Date, the Board shall have exclusive jurisdiction over the issuance of authorizations for Changes in Use of all water rights on the Reservation. The process for the consideration, issuance or denial of such Change in Use authorizations is set forth in the Law of Administration.

c. Enforcement. Upon the Effective Date, the Board shall have the jurisdiction to enforce the terms of this Compact as provided by Article IV.I.1. All controversies cognizable under this subsection shall be heard and resolved pursuant to the Compact and the Law of Administration.

d. Water Right Ownership Updates. The Board shall not have jurisdiction over water right ownership updates on water rights appurtenant to fee lands, which shall remain with the DNRC as set forth in 85-2-421 through 85-2-424, 85-2-426, and 85-2-431, MCA.

5. Powers and Duties.

a. In General. The Board shall have the power to promulgate procedures, prescribe forms, develop additional materials and implement amendments thereto as may be necessary and proper to exercise its

jurisdiction and carry out its assigned functions under this Compact and the Law of Administration. A set of forms for initial use by the Board in the implementation of the Law of Administration is attached hereto as Appendix 37. The Board may amend these forms at its discretion. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

b. Hearings. Pursuant to the procedures set forth in the Law of Administration, the Board shall hold hearings upon notice in proceedings before it and shall have the power to administer oaths, take evidence and issue subpoenas to compel attendance of witnesses or production of documents or other evidence, and to appoint technical experts. The Tribes and the State shall enforce the Board's subpoenas in the same manner as prescribed by the laws of the Tribes and the State for enforcing a subpoena issued by the courts of each respective sovereign in a civil action. The Persons involved in the controversy may present evidence and cross-examine any witnesses. The Board shall cause all hearings to be recorded, and shall determine the controversy and grant any declaratory or injunctive relief allowed by the Law of Administration, including a temporary order. The Board shall not have power to award money damages, attorneys' fees or costs; however it shall have the power to impose fines pursuant to the terms of the Law of Administration and award any kind of equitable relief. All decisions of the Board shall be in writing, and, together with a written justification for the decision and any dissenting opinions, shall be served personally or by certified mail on all Persons involved in the proceeding before the Board. All records of the Board shall be open to public inspection.

c. Employment of Water Engineer. The Board shall have the authority to employ a Water Engineer to carry out such functions as assigned by the Board pursuant to the Law of Administration, including the supervision of any water commissioners appointed by the Board. As set forth in the Law of Administration, the Engineer shall hold hearings upon notice in proceedings before the Engineer and shall have the power to administer oaths, take evidence and issue subpoenas to compel attendance of witnesses or production of documents or other evidence, and to appoint technical experts. The Tribes and the State shall enforce the Engineer's subpoenas in the same manner as prescribed by the laws of the Tribes and the State for enforcing a subpoena issued by the courts of each respective sovereign in a civil action. The Persons involved in the controversy may present evidence and cross examine any witnesses. The Engineer shall cause all hearings to be recorded, and shall determine the controversy and grant any relief allowed by the Law of Administration, including a temporary order. All decisions of the Engineer shall be in writing, and, together with a written justification for the decision, shall be served personally or by certified mail on all Persons involved in the

proceeding before the Engineer. All records of the Engineer shall be open to public inspection.

d. Appointment of Water Commissioner(s)

i. The Board shall have the authority, upon a unanimous vote of all five members of the Board, to appoint one or more commissioners to provide day-to-day administration of water on the Reservation. The compensation for any such commissioner and the identification of the Person(s) responsible for paying costs associated with the appointment of any such commissioner must also be established by a unanimous vote of all five members of the Board as part of the Board action appointing any such commissioner. Any commissioner appointed shall act under the supervision of the Water Engineer.

ii. Under the jurisdiction of the Board, and as set forth in the Law of Administration, the commissioner(s) shall have the authority to administer and distribute water only on the Reservation. The authority of any commissioner(s) appointed pursuant to this subsection, as it pertains to portions of the Tribal Water Right used within the FIIP, extends only to the delivery of water to FIIP diversion facilities and shall not extend to the administration of that water in FIIP facilities or on lands served by the FIIP, which shall remain subject to the authority of the Project Operator.

6. Review and Enforcement of Board Decisions.

a. Decisions by the Board shall be effective immediately, unless stayed by the Board. Persons involved in the proceedings before the Board may appeal any final decision by the Board to a Court of Competent Jurisdiction within thirty days of such decision. An appeal of a final decision of the Board shall be styled as a petition for judicial review of an agency decision pursuant to the rules of procedure of the court from which review is sought. The petition for judicial review shall be filed with the Board and the court and served upon all Persons involved in the proceeding before the Board, as well as the Tribes, the State and the United States. Service shall be accomplished according to the requirements of the court's rules of procedure.

b. Unless a petition is filed within thirty days of a final decision of the Board, as provided in Article IV.I.6.a, any decision of the Board shall be recognized and enforced by any court with personal and subject matter jurisdiction over the matter on petition by any Person, or a successor in interest, before the Board in the proceeding in which the decision was made.

c. A Court of Competent Jurisdiction in which a timely petition is filed pursuant to Article IV.I.6.a, or any court with personal and subject matter jurisdiction over the matter in which a petition to confirm or enforce is filed pursuant to Article IV.I.6.b, may order such temporary or permanent relief as it considers just and proper subject

to the limited waivers of immunity set forth in Article IV.I.8.

d. An appeal may be taken from any decision of the court in which a timely appeal is filed pursuant to Article IV.I.6.a, or in which a petition to confirm or enforce is filed pursuant to Article IV.I.6.b, in the manner and to the same extent as from orders or judgments of the court in a civil action.

e. In any petition to confirm or enforce the Board's decision, the Board shall file with the court to which appeal is taken the record of the proceedings before the Board within the time and in the manner provided by the court's rules of procedure.

f. The appellate court shall conduct the review on the record made before the Board. In considering the petition, the Board's legal conclusions shall be reviewed for correctness and its factual findings for abuse of discretion.

g. In the event that a court determines that it lacks subject matter or personal jurisdiction to rule on a petition for judicial review of a Board decision, the party filing the petition shall be entitled to petition for judicial review from any other Court of Competent Jurisdiction within thirty days from the date of a final court order finding a lack of jurisdiction.

7. Public Meetings and Records

a. Notwithstanding any other provisions of law, the Board is a public agency for purposes of the applicability of State and Tribal right to know laws.

b. All regular and special meetings of the Board, including all hearings conducted by the Office of the Engineer or the Board, shall be open to the observation of the general public pursuant to State and Tribal open meeting laws. Where there is a conflict of laws, the law that provides for greater openness to the public applies.

c. Where no more specific notice provisions are set forth in the Law of Administration, notice of any meeting, including an agenda, shall be provided to the public in a manner and timeframe consistent with the criteria set forth in State and Tribal law. Where there is a conflict of laws, the law that provides for earlier notice shall apply.

d. The Board shall keep the following records:

i. minutes of all meetings;

ii. recordings of all hearings conducted by the Board or the Office of the Engineer;

iii. all documents filed with or generated by the Board or the Office of the Engineer;

iv. any other records required by applicable provisions of Federal, State or Tribal law, provided that if

there is a conflict of laws, the law that provides for more expansive record retention shall apply.

e. All Board records are public records and shall be made available to the public for inspection under such reasonable terms and conditions as the Board shall establish.

8. Waiver of Immunity. The Tribes and the State hereby waive their respective immunities from suit, including any defense the State shall have under the Eleventh Amendment of the Constitution of the United States, in order to permit the resolution of disputes under the Compact by the Board, and the appeal or judicial enforcement of Board decisions as provided herein, except that such waivers of sovereign immunity by the Tribes or the State shall not extend to any action for money damages, costs, or attorneys' fees. The Parties recognize that only Congress can waive the immunity of the United States and that the participation of the United States in the proceedings of the Board shall be governed by Federal law, including 43 U.S.C. 666.

J. Amendments to the Law of Administration. The Board may not amend the Law of Administration. No amendment by the Tribes or the State of the Law of Administration shall be effective unless and until the other makes an analogous amendment. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

K. Water Rights Database. The Board shall cause all Appropriation Rights and Changes in Use authorized by the Board and all uses of water registered pursuant to the Law of Administration to be entered into the DNRC water rights database in a format agreed to by the Board and the DNRC.

ARTICLE V - DISCLAIMERS AND RESERVATION OF RIGHTS

A. No Effect on Water Rights of Other Tribes or on other Federal Reserved Water Rights.

1. Except as otherwise provided herein, the relationship between the Tribal Water Right described herein and any water rights of any other Indian tribe or its members, or of any federally-derived water right of an individual outside the boundaries of the Flathead Indian Reservation, or of the United States in its own right or on behalf of such other tribes or individuals, shall be determined by the rule of priority.

2. Nothing in this Compact shall be construed or interpreted as a precedent to establish the nature, extent, or manner of administration of the rights to water of any other Indian tribe, its members or Indian owners of trust land outside of the Flathead Indian Reservation.

3. Nothing in this Compact is intended, nor shall it be used, to affect or abrogate a right or claim of an Indian tribe other than the Confederated Salish and Kootenai Tribes.

4. Except as provided herein and authorized by Congress, nothing in this Compact shall be construed

or interpreted to establish the nature, extent, or manner of administration of rights to water of the United States on Federal lands outside of the Flathead Indian Reservation.

B. General Disclaimers. Nothing in this Compact shall be construed or interpreted:

1. To preclude the Tribes, Tribal members, and Allottees, or the United States, from applying to the Water Management Board for an Appropriation Right under the Law of Administration on the same basis as any other Person;

2. As a precedent for litigation of aboriginal or reserved water rights;

3. As precedent for interpretation or administration of future compacts between the United States and the State, or between the United States and any other state, or between the State and any other state;

4. As precedent for negotiation, interpretation or administration of any existing or future Compact, negotiated settlement, judicial settlement or other form of accommodation of water rights involving Indian tribes or individual Indians;

5. To preclude the possession, acquisition or exercise of Water Rights Arising Under State Law by the Tribes or Allottees or members of the Tribes;

6. To limit in any way the right of the Parties or any other Person to litigate any issue or question not resolved by this Compact;

7. To authorize the taking of any water right that is vested under State, Tribal or Federal law;

8. To affect the ability of tribes or qualified individuals under Title 25, Sections 151.4 and 151.8, Code of Federal Regulations, to purchase land from willing sellers or the Secretary's ability to convert fee land to trust land status;

9. To create or deny substantive rights through headings or captions used in this Compact;

10. To address or prejudge how the Tribal Water Right may be treated or interpreted in any interstate or international water apportionment proceeding;

11. To constitute a waiver of sovereign immunity by the Tribes or the State except as expressly set forth in this Compact;

12. To constitute a waiver of sovereign immunity by the United States except as expressly set forth in 43 U.S.C. 666 or as otherwise provided by Congress;

13. Except as expressly provided herein and as may be required by Congress, to modify the obligations of any agency of the United States;

14. To limit or prohibit the Tribes, their members or Allottees, or to limit the United States in any capacity, from objecting in any general stream adjudication in the Montana Water Court to any claims to water rights on or off the Flathead Indian Reservation;

15. To prevent the Montana Water Court from adjudicating any properly filed claims or objections to the use of water within the Flathead Indian Reservation;

16. To limit or prohibit the Tribes, their members or Allottees, or the United States in any capacity, from filing any necessary action to prevent any Person or Party from interfering with the Tribal Water Right;

17. To affect or determine the applicability of any State, Tribal or Federal law not subject to this Compact, including, but not limited to environmental and public safety laws, on activities of the Tribes, their members or Allottees or the United States;

18. To prejudice or predetermine any right that Tribal members or Allottees have to obtain the use of a portion of the Tribal Water Right under the provisions of this Compact and the Law of Administration;

19. To affect the capacity of any Tribal member or Allottee to lease his or her land;

20. To empower the Water Management Board to assess a fee for the use of water;

21. To confer any jurisdiction on the Water Management Board over any water right whose place of use is located outside the exterior boundaries of the Reservation;

22. To limit, diminish, modify, or enlarge any Party's adjudicatory or legislative jurisdiction except as expressly provided herein;

23. To constitute a waiver of an individual's right to object to the Compact during the Water Court decree process; or

24. To transfer, convert, or otherwise change the ownership or trust/fee status of land on the Reservation. Specifically, nothing in this Compact changes fee owned land to trust land or trust land to fee land, or in any way alters the ownership status of land within the exterior boundaries of the Flathead Indian Reservation.

C. Other Rights Reserved.

1. Nothing in this Compact is intended, nor shall be interpreted or applied, in any manner to alter, limit, or diminish the right of the Tribes to take all steps they deem necessary or prudent before any court or adjudicative forum, any legislature or legislative entity, or any State or Federal administrative agency, including but not limited to the Federal Energy Regulatory Commission, to protect any interests in Water Rights Arising Under State Law that the Tribes may acquire or seek to acquire and which are associated with the Federal

Energy Regulatory Commission license for the Kerr Hydroelectric Project, FERC Project No. 5 (32 FERC # 61,070, July 17, 1985, as amended) or any other hydroelectric facility located on the Reservation subject to FERC jurisdiction.

2. The Parties expressly reserve all rights not granted, recognized or relinquished in this Compact, including but not limited to the right to the continued exercise by members of the Tribes of Tribal off-Reservation rights to hunt, fish, trap and gather food and other materials, as reserved in Article III of the Hellgate Treaty of July 16, 1855 (12 Stat. 975).

D. Obligations of the United States Contingent.

1. Notwithstanding any language contained herein and except as authorized under Federal law, the obligations of the United States under this Compact shall be contingent upon ratification and necessary authorization by Congress.

2. The expenditure or advance of any money or the performance of any work by the United States or the Tribes pursuant to this Compact which requires appropriation of money by Congress or by the Tribes is contingent on such appropriation being timely made.

3. The Tribes and the State recognize that this Compact has not been finally approved by the United States as of the date of execution by the Tribes or the State, and that ratification by the Tribes or by the State in no manner limits or restricts the discretion of the United States in the negotiation of all matters related to this Compact.

E. Obligations of the State Contingent. The expenditure or advance of any money or the performance of any work by the State pursuant to this Compact that requires appropriation of money by the Montana Legislature or allotment of funds shall be contingent upon such appropriation or allotment.

ARTICLE VI - CONTRIBUTIONS TO SETTLEMENT

A. State Contribution to Settlement. The Parties agree that the State contribution to settlement shall be $55 million. The agreement to, expenditure, or advance of any State contribution which may require authorization and appropriation of money by the Montana Legislature or allotment of funds is contingent on such appropriation or allotment being made pursuant to Article V, Section 11(4) of the Montana Constitution. The Parties recognize that the amount and structure of the State funding is contingent on action of the Montana Legislature. If the Legislature appropriates funds in a manner inconsistent with the structure contemplated by the Parties in this section, the Parties agree to meet and confer to consider adjustments to the funding structure and priorities

described in Articles IV.H.1.a and b above. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

1. The State Contribution to Settlement shall be allocated as follows:

a. $4 million for water measurement activities;

b. $4 million for improving on-farm efficiency;

c. $4 million for mitigating the loss of Stock Water deliveries from the FIIP;

d. $30 million to offset pumping costs associated with Compact implementation and related projects; and

e. $13 million to provide for aquatic and terrestrial habitat enhancement.

B. Federal Contribution to Settlement. The Parties agree that the Federal contribution to settlement shall be negotiated by the Tribes, the State, and the United States as part of the negotiations on the Federal legislation to ratify and effectuate the Compact.

ARTICLE VII - FINALITY

A. Ratification and Effectiveness of Compact.

1. The terms of the Compact may not be amended without the consent of all the Parties following the first ratification by any Party. After the Effective Date, no provision of the Compact shall be modified except as expressly provided in the Compact. Any amendment that is not expressly provided for in the Compact must be ratified in the same manner as the Compact; however, if the proposed amendment concerns non-monetary matters and does not affect the water rights of the Tribes determined in this Compact or other property held in trust by the United States on behalf of the Tribes or Indians, the Secretary may ratify such amendment on behalf of the United States, as determined by Congress. The State and the Tribes will support provisions in the Federal legislation ratifying the Compact that delegates to the Secretary the authority to ratify such future amendments on behalf of the United States.

2. Notwithstanding any other provision in the Compact, the Tribes reserve the unilateral right to withdraw as a Party if:

a. Congress has not ratified this Compact and authorized appropriations for the Federal contribution to the settlement within four years from the date on which the ratification of the Compact by the Montana Legislature takes effect under State law. This is a continuing right until Congress ratifies the Compact;

b. Appropriations are not made in the manner contemplated by the Federal legislation ratifying this Compact;

c. The Parties do not reach agreement on the State contribution to settlement;

d. The State has not authorized appropriations for the State contribution to settlement within five years from the date the Compact is ratified by the United States; or

e. Appropriations are not made by the State in the manner contemplated by any agreement for contributions to settlement made pursuant to Article VI.A.

3. The Tribes may exercise their right to withdraw from the Compact under Article VII.A.2 by sending to the Governor of the State and to the Secretary by certified mail a resolution of the Tribal Council expressing the Tribes' intent to withdraw and specifying a reason for withdrawal and a withdrawal date not sooner than one hundred and twenty days from the date of the resolution. On the date designated in the resolution for Tribal withdrawal, the Compact shall become null and void without further action by any Party.

4. Notwithstanding any other provision in the Compact, the State reserves the unilateral right to withdraw as a Party to the Compact if:

a. Congress has not ratified this Compact within four years from the date on which the ratification of the Compact by the Montana Legislature takes effect under State law. This is a continuing right until Congress ratifies the Compact;

b. The Tribes have not ratified this Compact within five years from the date on which the ratification of the Compact by the Montana Legislature takes effect under State law;

c. Congress requires a State contribution to settlement that exceeds the contributions described in Article VI.A; or

d. Congress does not authorize and appropriate the Federal share of funding agreed to pursuant to Article VI.B.

5. The State may exercise its right to withdraw under Article VII.A.4 by sending to the Chair of the Tribal Council and to the Secretary a letter delivered by certified mail from the Governor of the State expressing the State's intent to withdraw and specifying a reason for withdrawal and a withdrawal date not sooner than one hundred and twenty days from the date of the letter. On the date designated in the letter for State withdrawal, the Compact shall become null and void without further action by any Party.

B. Incorporation into Decrees.

1. Within one hundred eighty (180) days of the date this Compact is ratified by the Tribes, the State, and the United States, whichever is latest, the Tribes, the State, and/or the United States shall file, in the general

stream adjudication initiated by the State, pursuant to the provisions of 85-2-702(3), MCA, a motion for entry of the proposed decree attached hereto as Appendix 38 as the decree of the water rights held by the United States in trust for the Tribes, Tribal members, and the Allottees of the Tribes as well as those Water Rights Arising Under State Law set forth in Article III.D.4.a.i and Article III.D.5, of which the Tribes become co-owners pursuant to this Compact, and such other provisions of the Compact as are related to the determination of these water rights and their administration. If the Montana Water Court does not approve the proposed decree submitted with the motion within three years following the filing of the motion, the Compact shall be voidable by written agreement of the State and the Tribes. If the Montana Water Court approves the proposed decree within three years, but the decree is subsequently set aside by the Montana Water Court or on appeal, the Compact shall be voidable by written agreement of the State and the Tribes. Any effect of the failure of approval or setting aside of the decree on the approval, ratification, and confirmation by the United States shall be as provided by Congress. The Parties understand and agree that the submission of the Compact to a State court or courts, as provided for in the Compact, is solely to comply with the provisions of 85-2-702(3), MCA, and does not expand the jurisdiction of the State court or expand in any manner the waiver of sovereign immunity of either the United States or the Tribes in the McCarran Amendment, 43 U.S.C. 666, or other provision of Federal law.

2. Consistent with 3-7-224, MCA, setting forth the jurisdiction of the chief water judge, for the purposes of 85-2-702(3), MCA, the review by the Montana Water Court shall be limited to the contents of Appendix 38, and may extend to other sections of the Compact only to the extent that they relate to the determination of water rights and their administration. The final decree shall consist of the contents of Appendix 38, and such other information as may be required by 85-2-234, MCA. Nevertheless, pursuant to 85-2-702(3), MCA, the terms of the entire Compact must be included in the preliminary decree without alteration for the purpose of notice.

C. Disposition of State and Federal Suits.

1. On issuance of a final decree by the Montana Water Court or its successor, and the completion of any direct appeals therefrom, or on expiration of the time for filing any such appeal:

a. the United States, the Tribes, and the State shall execute and file joint motions pursuant to Rule 41(a), Fed.R.Civ.P., to dismiss without prejudice any and all claims of the Tribes, Tribal members, and Allottees and any and all claims made by the United States for the benefit of the Tribes, Tribal members, and Allottees in United States v. Abell, No. CIV-79-33-M (filed April 5, 1979). The case may only be resumed if either the State or the Tribes exercise the rights each holds under Article VII.A;

b. the Tribes and the State shall execute and file joint motions to dismiss without prejudice the case entitled Confederated Salish and Kootenai Tribes v. Bud Clinch, Director, Montana Department of Natural Resources and Conservation, and the Montana Department of Natural Resources and Conservation, Montana First Judicial Court, County of Lewis and Clark, Cause No. BDV-2001-253, Montana First Judicial District Court, Lewis and Clark County, Montana;

c. The United States, the Tribes, and the State shall execute and file joint motions pursuant to Rule 41(a), Mont.R.Civ.P., to dismiss without prejudice any and all claims of the Tribes, Tribal members, and Allottees and any and all claims made by the United States for the benefit of the Tribes, Tribal members, and Allottees that have been filed in the Montana Water Court as contemplated by Article VII.D.2. The case adjudicating those claims may only be resumed if either the State or the Tribes exercise the rights each holds under Article VII.A.2 and 4; and

d. The Decree shall be filed by the Parties as a consent decree in Abell, or in Federal court as a new proceeding after the dismissal of Abell conditional on agreement by the Parties to seek the necessary State, Tribal, and Federal ratification of the Compact, if it is finally determined in a judgment binding on the State that the State courts lack jurisdiction over, or that the State court proceedings are inadequate to adjudicate some or all of the water rights asserted in Abell.

D. Settlement of Water Rights Claims.

1. The water rights and other benefits confirmed to the Tribes in this Compact are in full and final satisfaction of and are intended to be in replacement of and substitution for all claims to water or to the use of water by the Tribes, Tribal members, and Allottees and the United States on behalf of the Tribes, Tribal members, and Allottees existing on the Effective Date, except for any Appropriation Rights or Water Rights Arising Under State Law held by the Tribes, their members, or Allottees as of the Effective Date or acquired thereafter, which shall be satisfied pursuant to their own terms.

2. The Tribes and United States will file all of their claims to water on and off of the Flathead Indian Reservation on or before July 1, 2015, pursuant to 85-2-702(3), MCA. Upon filing, the Tribes and United States will request that the Montana Department of Natural Resources and Conservation stay any action on such claims pending the occurrence of the following events:

a. The passage of an Act of Congress ratifying the Compact and authorizing appropriations for monetary settlement to the Tribes;

b. Approval by the Tribes of the Compact and the Act described in Article VII.D.2.a.

c. Issuance by the Montana Water Court of a final water right decree or decrees incorporating the water rights quantified pursuant to this Compact; and

d. All portions of the final Water Court decree or decrees survive exhaustion of all avenues of appeal.

3. Upon occurrence of these events, the waiver and dismissal described in Article VII.C.1.c and VII.D.3 shall be accomplished.

4. In consideration of the water rights and other benefits confirmed to the Tribes, Tribal members, and Allottees in this Compact, and of performance by the State and the United States of all actions required by this Compact, and on entry of a final order issuing the decree of the Tribal Water Right held in trust by the United States as quantified in this Compact and displayed in Appendix 38 and occurrence of the events set forth in Article VII.D.2, the Tribes and the United States as trustee for the Tribes, Tribal members, and Allottees shall waive, release, and relinquish any and all claims to water rights or to the use of water, and shall dismiss any such claims filed pursuant to Article VII.D.2, existing on the Effective Date.

E. Settlement of Tribal Claims Against the United States. Waiver of claims against the United States by the Tribes, their members and Allottees shall be as provided by Congress.

F. Binding Effect. After the Effective Date and the entry of a final decree by the Montana Water Court of the water rights quantified by this Compact, or if necessary the Federal court in Abell, the Compact's terms shall be binding on:

1. The State and any Person using, claiming or in any manner asserting any right under the authority of the State to the use of water in the State; provided that, the validity of consent, ratification, or authorization by the State is to be determined by State law;

2. The Tribes and any Person using, claiming or in any manner asserting any right to the use of the Tribal Water Right, or any right arising under any doctrine of reserved or aboriginal water rights for the Tribes, Tribal members, and Allottees, or any rights arising under Tribal law; provided that, the validity of consent, ratification or authorization by the Tribes is to be determined by Tribal and, if applicable, Federal law; and

3. The United States and any Person using, claiming or in any manner asserting any right under the authority of the United States to the use of water in the State; provided that, the validity of consent, ratification or authorization by the United States is to be determined by Federal law.

ARTICLE VIII - LEGISLATION/DEFENSE OF COMPACT

A. State Legislation. The State and the Tribes agree to seek ratification of the Compact by the Montana Legislature and any additional State legislation necessary to effectuate the Compact.

B. Federal Legislation. The State and the Tribes agree to seek ratification of the Compact by Congress and any additional Federal legislation necessary to effectuate the Compact.

1. The State and the Tribes will support provisions in the Federal legislation ratifying this Compact that authorizes the United States District Court for the District of Montana in Missoula to review decisions of the Board and the MFWP authorized in the Compact; provided that, the sovereign immunity of the United States is not waived by such provision of the legislation.

2. The State and Tribes will support provisions in the Federal legislation ratifying this Compact that authorizes the Net Power Revenues distributions described in Article IV.H.3.

3. The State and the Tribes will support provisions in the Federal legislation ratifying this Compact that delegates to the Secretary the authority to ratify future amendments on behalf of the United States pursuant to Article VII.A.1.

C. Tribal Legislation. The State and the Tribes agree to seek ratification of the Compact by the Tribes and any Tribal legislation necessary to effectuate the Compact.

D. Defense of the Compact. The Parties agree to defend the Compact after its Effective Date from all challenges and attacks and in all proceedings pursuant to Article VII.B and C.

IN WITNESS WHEREOF the representatives of the Confederated Salish and Kootenai Tribes, the State of Montana, and the United States, have signed the Compact on the ____ day of ____, 201_.

**Section 2. Unitary administration and management ordinance.**

CHAPTER I

WATER RESOURCES CONSERVATION, DEVELOPMENT AND ADMINISTRATION

PART 1 - GENERAL PROVISIONS

1-1-101. Authority.

1. This Ordinance parallels legislation adopted by the Confederated Salish and Kootenai Tribes pursuant to Tribal approval of the Confederated Salish and Kootenai Tribes-Montana Compact and the Montana Water Use Act of 1973 to effectuate Unitary Administration and Management on the Flathead Indian Reservation.

2. This Ordinance and the parallel Tribal legislation are contingently effective; neither operates with the

force and effect of law without the other. No modification by the Tribes or the State of Montana of these respective laws shall be effective within the exterior boundaries of the Reservation unless and until the other makes an analogous modification. No amendment of this Ordinance that may affect a use of the Tribal Water Right may be made without Secretarial approval.

3. Upon the Effective Date of the Compact, this Ordinance shall govern all water rights, whether derived from tribal, state or federal law, and shall control all aspects of water use, including all permitting of new uses, changes of existing uses, enforcement of water right calls and all aspects of enforcement within the exterior boundaries of the Flathead Indian Reservation. Any provision of Title 85, MCA, that is inconsistent with this Law of Administration is not applicable within the Reservation.

1-1-102. Reserved.

1-1-103. Reserved.

1-1-104. Definitions. Unless otherwise defined herein, capitalized terms used in this Ordinance shall have the meaning set forth in the Compact.

1. "Allottee" or "Allottees" means an owner of an interest in a tract of land held in trust by the United States which was allotted pursuant to the Act of April 23, 1904, 33 Stat. 302, as amended, or the Act of February 25, 1920, 41 Stat. 452, as amended.

2. "Appropriate" means to divert, impound, maintain an instream, inlake, inwetland or impoundment use, or withdraw a quantity of water for a beneficial use on the Flathead Indian Reservation under color of law.

3. "Appropriation" means the diversion, impoundment, maintenance of an instream, lake, Wetland, or impoundment use, or the withdrawal of a quantity of water for a Beneficial Use on the Flathead Indian Reservation under color of law.

4. "Appropriation Right" means a right to Appropriate water issued by the Water Management Board pursuant to the terms of the Compact and this Ordinance.

5. "Aquifer Injection" means the subsurface discharge of fluids into the ground by means of an Injection Well.

6. "Appropriator" means a Person who Appropriates water.

7. "Beneficial Use" means a consumptive or non-consumptive use of water for the benefit of the Appropriator, other Persons, the Tribes, one or more Tribal members, or the general public, including but not limited to agricultural, stock water, domestic, fish and wildlife, cultural and religious practices, industrial, Instream

Flow, irrigation, mining, Mitigation Water, municipal, power, recreational uses, and Wetlands purposes.

8. "Business" means a building or site where commercial work is carried on, including but not limited to a factory, store, or office.

9. "Change in Use" means an authorized change in the point of diversion, the place of use, the period of use, the purpose of use, or the place of storage of an Appropriation Right issued by the Water Management Board under the Compact and this Ordinance, or of an Existing Use. A changed water right retains the original priority date of that right.

10. "Compact" means that water rights settlement entered into by the Confederated Salish and Kootenai Tribes, the State of Montana, and the United States.

11. "Complainant" means one who files a Complaint.

12. "Complaint" means a written assertion of injury submitted to the Engineer pursuant to Section 3-1-102 of this Ordinance.

13. "Consumptive Use" means the amount of water used for a beneficial purpose, such as water transpired by growing vegetation, evaporated from soils or water surfaces, or incorporated into products, that does not return to the Groundwater or surface water source.

14. "Designee" means an individual selected by the Engineer to exercise, in regard to a particular application or objection, those powers assigned to the Engineer under Chapter II of this Ordinance. Any Staff is eligible to be selected as a Designee provided that he or she has not previously worked on the particular application or objection at issue.

15. "Developed Spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of Groundwater, from which Groundwater is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

16. "Development" means contiguous or closely grouped parcels of land under the same or affiliated ownership, including, but not limited to, housing subdivisions or any combination of business and residential units.

17. "DNRC" means the Montana Department of Natural Resources and Conservation, or any successor agency.

18. "Domestic Allowance" means an entitlement to use water issued to households and small businesses pursuant to the provisions of Section 2-2-117 of this Ordinance; Domestic Allowances include Individual Domestic

Allowances, Shared Domestic Allowances, and Development Domestic Allowances.

19. "Domestic Use" means those water uses common to a household, including washing, drinking, bathing, waste disposal, cooling and heating, domestic animals, and garden and landscape irrigation. Domestic Use does not include the filling of ponds, pits, pit-dams or reservoirs.

20. "Effective Date" means the date on which the Compact is finally approved by the Tribes, by the State, and by the United States, and on which the Law of Administration has been enacted and taken effect as the law of the State and the Tribes, whichever date is latest.

21. "Emergency" means a situation that demands unusual or immediate action to prevent imminent injury to life, property, or the environment.

22. "Enclosed Storage" means a storage container fully enclosed to include a cistern or tank.

23. "Existing Use" means a use of water under color of Tribal, State or Federal law in existence as of the Effective Date, including uses in existence on that date that are eligible for either of the registration processes set forth in Sections 2-1-101 through 2-1-108 of this Ordinance; provided that any portion of a Water Right Arising Under State Law within the Reservation that is, at any point after the date the ratification of the Compact by the Montana Legislature takes effect under State law, voluntarily relinquished or is legally determined to be abandoned, relinquished, or have otherwise ceased to exist, shall be stricken from the relevant basin decree as a Water Right Arising Under State Law and be entitled to no further protection as such a right or as an Existing Use.

24. "Flathead Indian Irrigation Project" or "FIIP" means the irrigation project developed by the United States to irrigate lands within the Reservation pursuant to the Act of April 23, 1904, Public Law 58-159, 33 Stat. 302 (1904), and the Act of May 29, 1908, Public Law 60-156, 35 Stat. 441 (1908), and includes, but is not limited to, all lands, reservoirs, easements, rights-of-way, canals, ditches, laterals, or any other FIIP facilities (whether situated on or off the Reservation), head gates, pipelines, pumps, buildings, heavy equipment, vehicles, supplies, records or copies of records and all other physical, tangible objects, whether of real or personal property, used in the management and operation of the FIIP.

25. "FIIP Influence Area" means the lands influenced by the operations of the FIIP as identified on the map attached to the Compact as Appendix 2.

26. "Flathead Indian Reservation" or "Reservation" means all land within the exterior boundaries of the Indian Reservation established under the July 16, 1855 Treaty of Hellgate (12 Stat. 975), notwithstanding the

issuance of any patent, and including rights-of-way running through the Reservation.

27. "Flathead System Compact Water" means that portion of the Tribal Water Right consisting of 229,383 acre feet per year that the Tribes may withdraw from the Flathead River or Flathead Lake, which includes up to 90,000 acre feet per year stored in Hungry Horse Reservoir, with a maximum total volume consumed of 128,158 acre feet per year.

28. "Groundwater" means any water that is beneath the surface of the earth.

29. "Groundwater Management Area" means an area designated and managed under Section 1-1-109 of this Ordinance.

30. "Heating/Cooling Exchange Well" means a Well for the purpose and with the attributes set forth in Section 2-2-119(1) of this Ordinance.

31. "Home" means a house, apartment, or other shelter that is a permanent or temporary residence of a Person, family, or household.

32. "Illegal" or "Illegally" means, as it pertains to the use of water, to Appropriate water not pursuant to an Appropriation Right or Existing Use.

33. "Injection Well" means a Well utilized for injecting fluids or gases into geologic materials. Open pits, ponds, or excavations are not considered Injection Wells.

34. "Instream Flow" means a stream flow retained in a watercourse to benefit the aquatic environment. Instream Flow may include Natural Flow or streamflow affected by regulation, diversion, or other modification. A water right for Instream Flow purposes is quantified for a stream reach and measured for enforcement purposes at a specified point.

35. "Livestock" means cattle, bison, sheep, swine, horses, mules, goats, or other animals specifically raised and used for food or fiber or as a beast of burden.

36. "Mitigation" means the reallocation of surface water or Groundwater through a Change in Use or other means to offset adverse effect resulting from Net Depletion by any proposed new Appropriation.

37. "Mitigation Plan" means a plan as developed by an applicant to provide Mitigation.

38. "NRD" means the Confederated Salish and Kootenai Tribes' Natural Resources Department.

39. "Natural Wetland" means a Wetland area that is maintained with a natural surface water source, natural Groundwater source or a combination of natural surface water and natural Groundwater without any artificial means of diversion, impoundment, withdrawal, excavation, or other artificial means of control.

40. "Net Depletion" means the calculated volume, rate, timing, and location of reductions to a water source resulting from a proposed new Appropriation that are not offset by the corresponding accretions to that source caused by the proposed new Appropriation.

41. "Non-consumptive Use" means any beneficial use of water that does not meet the definition of consumptive use.

42. "Other Instream Flows" means the Tribal instream flow water rights for stream reaches described in Article III.C.1.d.iii of the Compact.

43. "Office of the Engineer" means the Engineer and Staff, acting in their official capacities.

44. "Person" means an individual or any other entity, public or private, including the Tribes, the State, and the United States, and all officers, agents and departments of each sovereign.

45. "Pits, Pit-dams, Constructed Ponds, or Reservoirs" refer to bodies of water that are created by man-made means and which store water for beneficial use.

46. "Project Manager" means the person or team of persons hired by the Project Operator to operate and manage the FIIP in accordance with its direction, this and other applicable agreements, and applicable law, including the Compact.

47. "Project Operator" means that entity with the legal authority and responsibility to operate the Flathead Indian Irrigation Project.

48. "Public Water Supply System" means a system for the provision of water for human consumption that has at least 15 service connections or that regularly serves at least 25 Persons daily for any 60 or more days in a calendar year.

49. "Publish" or "Publication" means, unless otherwise designated, the printing of an announcement of document availability, or the text of the document itself, in a newspaper of general circulation on the Reservation and in the Tribal newspaper and posting on the Water Management Board's website.

50. "Redundant Well" means a Well to provide a backup source of water for a Public Water Supply System.

51. "Restored Natural Wetland" means a Wetland area that, upon restoration, shall be maintained with a natural surface water source, natural Groundwater source, or a combination of natural surface water and natural Groundwater without any artificial means of diversion, impoundment, withdrawal, excavation, or other artificial means of control.

52. "Secretary" means the Secretary of the United States Department of the Interior or the Secretary's duly assigned representative.

53. "Shall" means a mandatory and not a discretionary act.

54. "Shared Well" means a single Well that is physically manifold to multiple homes and/or businesses and is cooperatively used pursuant to a Shared Well Agreement.

55. "Shared Well Agreement" means a legally binding document that stipulates the manner in which a Shared Well is jointly used between or among all Homes or Businesses connected to the well; to be valid, it must be signed by representatives for each Person having a possessory interest in each individual Home or Business connected to a Shared Well.

56. "Spring" means a perennial hydrologic occurrence of water involving the natural flow of water originating from beneath the land surface and arising to the surface of the ground.

57. "Staff" means the employees, contractors and others assigned to or engaged by the Board or the Engineer to assist or facilitate the Engineer in carrying out the duties assigned to the Engineer by the Compact and this Ordinance, and by the Board pursuant to the same.

58. "Stock Tank" means a 30 to 1500 gallon tank used to provide drinking water for Livestock that is equipped with a water level regulator that shuts off supply to keep the Stock Tank from overflowing.

59. "Substitute Well" means a Well that replaces an existing Well which is to be abandoned.

60. "Temporary Emergency Appropriation" means the temporary beneficial use of water necessary to protect lives, property, or the environment, by reason of fire, storm, earthquake or other disaster, or unforeseen combination of circumstances which call for immediate action. An appropriation made necessary due to drought conditions is not a temporary emergency appropriation.

61. "Temporary Groundwater Management Area" means an area established pursuant to Section 1-1-109(10) of this Ordinance.

62. "Tribal Member" means a Person who is lawfully enrolled by and whose name appears on the official enrollment list of the Confederated Salish and Kootenai Tribes.

63. "Tribal Water Right" means the water rights of the Confederated Salish and Kootenai Tribes, including any Tribal member or Allottee, that arise under Federal law, as set forth in Article III.A, Article III.C.1.a through j, Article III.C.1.k.i, Article III.C.1.l.i, Article III.D.1 through 3, and Article III.D.7 and 8 of the Compact. The term "Tribal Water Right" also includes those rights identified in Article III.H of the Compact that are appurtenant to

lands taken into trust by the United States on behalf of the Tribes.

64. "Tribes" means the Confederated Salish and Kootenai Tribes of the Flathead Reservation, and all officers, agencies, and departments thereof.

65. "Waste" or "Wasting" means the unreasonable loss of water resulting from the design, construction, operation or maintenance of a water diversion, storage or distribution facility, Well, Developed Spring, or the application of water to anything but a beneficial use.

66. "Water Engineer" or "Engineer" means the Person satisfying the criteria in Section 1-2-109 of this Ordinance employed by the Water Management Board pursuant to Article IV.I.5.c of the Compact to exercise the powers and duties of the Water Engineer as set forth in the Compact and this Ordinance.

67. "Water Management Board" or "Board" means the board created by Article IV.I of the Compact and vested with the responsibilities set forth in the Compact and in Tribal and State law for the administration of water within the Reservation.

68. "Water Rights Arising Under State Law" means those valid water rights Arising Under State Law existing as of the Effective Date and not subsequently relinquished or abandoned, as those rights are: decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permitted by the DNRC; exempted from filing in the Montana general stream adjudication pursuant to 85-2-222, MCA; or excepted from the permitting process pursuant to 85-2-306, MCA.

69. "Well" means any artificial opening or excavation in the ground, however made, by which Groundwater is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

70. "Well Log Report" means DNRC Form No. 603 (see ARM 36.12.102), or any successor reporting form and requirement promulgated in State law.

71. "Well Shaft Casing" means an impervious durable pipe placed in a well or Developed Spring to prevent the walls from caving, to seal off surface drainage, or undesirable water, gas, or other fluids to prevent their entering the well, and to prevent the Waste of Groundwater.

72. "Wetland" means an area that is inundated or saturated by surface water or Groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

73. "Wetland Quantified Appropriation Right" means an Appropriation Right issued for a Wetlands purpose that utilizes any man-made diversions, impoundment, withdrawals, excavations, or other artificial means for the purposes of appropriation for either all or a portion of a Wetland.

74. "Wetland Protective Appropriation Right" means an Appropriation Right issued for either a Natural Wetland or Restored Natural Wetland.

75. "Works" means all property, real or personal, necessary or convenient to the appropriation, conservation, storage, diversion, distribution, development, screening and utilization of water.

1-1-105. Measurement of Water. Upon the effective date of this Ordinance, legal standards of measurement of water within the Flathead Reservation shall be as follows:

1. Flow rates shall be measured in cubic feet per second, unless otherwise provided herein. Where documentary evidence of an existing use is expressed in gallons per minute, 448.8 gallons per minute shall be considered equivalent to a flow of one cubic foot per second. Where documentary evidence of an existing use is expressed in statutory or miner's inches, 40 statutory or miner's inches shall be considered equivalent to a flow of one cubic foot per second.

2. Volumes of water shall be measured in acre-feet, unless otherwise provided herein. One acre-foot shall be considered equivalent to a volume of 43,560 cubic feet. One cubic foot shall be considered equivalent to a volume of 7.48 gallons.

1-1-106. Measurement of Time. Whenever in this Ordinance an action is required to be performed within a certain number of days, the time for completion of the act shall be measured in calendar days unless the last day falls on a Friday, Saturday, Sunday, or Tribal, State or Federal legal holiday, in which case the time for performance is extended to the next subsequent business weekday.

1-1-107. Appropriation Rights Allowed.

1. The following Appropriation Rights or Changes in Use may be authorized by the Board pursuant to the Compact and this Ordinance:

a. Appropriation Rights for Groundwater appropriations for Redundant or Substitute Wells as set forth in Section 2-2-115 of this Ordinance.

b. Appropriation Rights for Stock Water Allowances as set forth in Section 2-2-116 of this Ordinance.

c. Appropriation Rights for Domestic Allowances as set forth in Section 2-2-117 of this Ordinance.

d. Appropriation Rights for uses of Flathead System Compact Water as set forth in Section 2-2-118 of

this Ordinance.

e. Appropriation Rights for non-consumptive geothermal heating or cooling exchange Wells as set forth in Section 2-2-119 of this Ordinance.

f. Appropriation Rights for Temporary Emergency Appropriations as set forth in Section 2-2-120 of this Ordinance.

g. Appropriation Rights or Change in Use authorizations for Wetlands as set forth in Sections 2-2-123 and 2-2-124 of this Ordinance.

h. Appropriation Rights for Non-consumptive Uses, including, but not limited to, hydropower generation and not including flow-through ponds.

i. Appropriation Rights for which adverse effects to existing Appropriators are offset by Mitigation.

j. Changes in Use of all Appropriation Rights or Existing Uses except for those Appropriation Rights authorized under subsections (1)(a), (1)(b), (1)(c), (1)(e), (1)(f), (1)(k), or (1)(l) of this Section or those for Existing Uses exempt from the permitting requirements of 85-2-306, MCA, or from the claim filing requirements of 85-2-221, MCA, as set forth in 85-2-222, MCA; provided that a use authorized under subsection (1)(h) may not be changed from a Non-consumptive Use to a consumptive use.

k. Appropriation Rights to Appropriate surface water to conduct response actions related to natural resource restoration required for:

i. remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.;

ii. aquatic resource activities carried out in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387; or

iii. remedial actions taken pursuant to the Remedial Action Upon Release of Hazardous Substance Act, Title 75, chapter 10, part 7, MCA.

No Appropriation Rights issued pursuant to this subsection may be used for dilution.

l. Appropriation Rights for uses of surface water for or by a municipality or regional distribution system.

m. Appropriation Rights for new uses of the Tribal Water Right by the Tribes, Tribal Members, or Allottees, provided that any such new uses be sourced from:

i. Flathead System Compact Water; or

ii. another source, provided that any adverse effects to existing Appropriators caused by the Net

Depletion of the new Appropriation Right must be offset by Mitigation pursuant to Section 1-1-112 of this Ordinance.

2. Other than those Appropriation Rights set forth in subsection (1) of this Section, the Board may not grant an Appropriation Right or other authorization to Appropriate surface water or Groundwater within the exterior boundaries of the Flathead Indian Reservation.

1-1-108. Reservation Water Rights Database. The Board shall cause all Appropriation Rights and Changes in Use authorized by the Board, including those uses registered pursuant to the provisions of Sections 2-1-101 through 2-1-107 of this Ordinance, to be entered into the DNRC water rights database in a format agreed to by the Board and the DNRC.

1-1-109. Groundwater Management Areas. The Board may designate, modify, or repeal either permanent or Temporary Groundwater Management Areas as provided in this part.

1. Each designation of a Groundwater Management Area shall identify the need for the special management, the boundaries of the area, the water resources targeted for special management, and the specific restrictions that will apply in the Groundwater Management Area.

2. The designation, modification, or repeal of a Groundwater Management Area may be initiated by submission of a correct and complete petition by:

a. the Tribes, the State, or the United States;

b. a local public health agency;

c. a municipality, county, or conservation district; or

d. at least one-third of the water rights holders in a proposed Groundwater Management Area.

3. A correct and complete petition shall:

a. be in a form prescribed by the Board;

b. contain facts and analysis prepared by a hydrologist, hydrogeologist, qualified scientist, or a qualified licensed professional engineer demonstrating the existence of one or more of the criteria set forth in subsection (8) are met; and

c. describe proposed measures, if any, needed to mitigate effects of the criteria identified in subsection (8) of this Section; and that are alleged in the petition or describe the rationale as to why a Groundwater Management Area should be repealed or modified.

4. Upon receipt of a completed petition complying with subsection (3) of this Section, the Office of the

Engineer shall date stamp the petition.

5. Office of the Engineer review:

a. within 180 days of the date of receipt of the petition pursuant to subsection (4) of this Section, the Office of the Engineer shall:

i. determine in writing that the petition is correct and complete; or

ii. notify the petitioner of any defects in a petition, with an explanation in writing of the defect(s).

b. any petition that is returned pursuant to subsection (5)(a)(ii) of this Section and not corrected within 90 days from the date of return shall be deemed terminated.

c. if the Office of the Engineer does not notify the petitioner pursuant to subsection (5)(a) of this Section, the petition shall be treated as correct and complete.

6. Board review:

a. within 60 days after a petition is determined to be correct and complete, the Board shall:

i. deny the petition in writing in whole or part, stating the reasons for denial;

ii. inform the petitioner in writing that the Board will study the information presented in the petition for a period not to exceed 90 days before denying or proceeding with the petition; or

iii. publish notice of the Board's consideration of action concerning a permanent or Temporary Groundwater Management Area pursuant to subsection (8) of this Section.

b. failure of the Board to act under subsection (6)(a) of this Section shall be deemed a denial of the petition.

7. If the Board determines that a correct and complete petition contains sufficient information to warrant the Board granting the petition, the Board shall proceed to hear the petition. The Board shall provide public notice of the hearing by:

a. publishing a notice at least once each week for 3 successive weeks, with the first notice not less than 30 days before the date of the hearing in a newspaper of general circulation on the Reservation;

b. serving by mail a copy of the notice, not less than 30 days before the hearing, upon each Person or public agency known from an examination of the records of the Board to be a water right holder within the proposed or existing Groundwater Management Area;

c. serving by mail a copy of the notice upon any other Person, including Tribal, State or federal agencies, that the Board knows to be interested in or affected by the proposed designation, modification, or repeal of a

Groundwater Management Area.

d. the notice under subsections (7)(a) through (7)(c) must include a summary of the basis for the proposed action. Publication and mailing of the notice as prescribed in this Section, when completed, is considered to be sufficient notice of the hearing to all interested parties.

e. the Board shall make available to the public on its website a complete copy of the petition or request to designate, modify, or repeal either permanent or Temporary Groundwater Management Areas.

8. The Board may designate a permanent Groundwater Management Area if it finds by a preponderance of the evidence that any of the following criteria have been met:

a. current or projected reductions of recharge to the aquifer or aquifers within the boundaries of the proposed permanent Groundwater Management Area will cause Groundwater levels to decline to the extent that water rights holders cannot reasonably exercise their water rights;

b. current or projected Groundwater withdrawals from the aquifer or aquifers in the boundaries of the proposed Groundwater Management Area have reduced or will reduce Groundwater levels or surface water availability necessary for water rights holders to reasonably exercise their water rights;

c. current or projected Groundwater withdrawals from the aquifer or aquifers in the proposed permanent Groundwater Management Area have impaired or will impair Groundwater quality necessary for water right holders to reasonably exercise their water rights based on relevant water quality standards;

d. Groundwater within the proposed permanent Groundwater Management Area is not suitable for any beneficial use; or

e. public health, safety, or welfare is or will become at risk.

9. Monitoring and studies:

a. if the Board finds that sufficient facts, including monitoring information, are not available to designate a permanent Groundwater Management Area, the Board may designate a Temporary Groundwater Management Area to allow studies to obtain the facts needed to:

i. correct deficiencies that the Board identifies in a petition for a permanent Groundwater Management Area;

ii. determine the extent to which the criteria identified in subsection (8) are met or not met;

iii. determine appropriate control measures to implement to designate a permanent Groundwater Management Area.

b. the Board shall set the length of time that the Temporary Groundwater Management Area shall be in effect. The term of a Temporary Groundwater Management Area may be extended by the Board, but may not exceed a total of 6 years.

c. the Board shall determine the responsibility for funding the costs associated with subsection (9)(a). Any person on whom a funding responsibility is placed by the Board pursuant to this subsection may appeal that determination to a Court of Competent Jurisdiction, which shall review the determination for an abuse of discretion.

d. prior to designating a Temporary Groundwater Management Area, the Board shall provide notice and the opportunity for public hearing pursuant to the notice provisions of subsection (7) of this Section.

e. a Temporary Groundwater Management Area designation is for the purpose of monitoring and study and shall not include the control provisions set forth in subsection (10) of this Section, other than measurement, water quality testing, and reporting.

f. prior to expiration of a Temporary Groundwater Management Area, and subject to the limitations of subsection (9)(b) of this Section, the Board may amend or repeal the establishment of the Temporary Groundwater Management Area, or may designate a permanent Groundwater Management Area under this Section.

10. A permanent Groundwater Management Area may include, but is not limited to, one or more of the following provisions:

a. closing the permanent Groundwater Management Area to further appropriation of surface water and/or Groundwater;

b. restricting the development of future surface water and/or Groundwater appropriations within the permanent Groundwater Management Area;

c. prohibiting or restricting the issuance of Stock Water Allowances pursuant to Section 2-2-116 of this Ordinance;

d. prohibiting or restricting the issuance of Domestic Allowances pursuant to Section 2-2-117 of this Ordinance;

e. requiring measurement and reporting of future surface water or Groundwater appropriations within the permanent Groundwater Management Area;

f. requiring water conservation measures within the permanent Groundwater Management Area;

g. requiring mitigation of Groundwater withdrawals within the permanent Groundwater Management Area;

h. reporting data to the Board within the permanent Groundwater Management Area; and

i. other provisions that the Board determines are appropriate and adopts.

11. The Board, upon petition, may modify or repeal a Groundwater Management Area. Any petition seeking the modification or repeal of a permanent Groundwater Management Area must demonstrate by a preponderance of the evidence that current or projected recharge to the aquifer or aquifers or changes to current or projected Groundwater withdrawals from the aquifer or aquifers in the boundaries of an existing Groundwater Management Area justify modification or repeal of that Groundwater Management Area.

12. Appeal from any final decision of the Board concerning the designation, modification or repeal of any permanent Groundwater Management Area pursuant to this Section shall be as set forth in Section 2-2-112 of this Ordinance.

13. If the Board determines that it is appropriate for a Groundwater Management Area identified pursuant to this section to extend to an area adjacent to but outside the boundaries of the Reservation, the Board, through the Office of the Engineer, may petition the DNRC, pursuant to 85-2-506(2)(c)(i), MCA, to designate a Controlled Groundwater Area in that adjacent area. Designation or modification by the DNRC of a Controlled Groundwater Area in any such adjacent area shall be governed by the procedures set forth in 85-2-506, MCA.

1-1-110. Standards for Applications for Appropriation Rights and Changes in Use. For any application for an Appropriation Right or Change in Use that is not one of the categories of Appropriation Right identified in Sections 1-1-112(1) or 2-2-118 of this Ordinance, in addition to whatever information is required by specific provisions of the Ordinance, all applications for Appropriation Rights and Changes in Use must include:

1. An identification of the proposed beneficial use.

2. An identification of the source of water supply.

3. A project description, including an identification of any water right(s) to be changed to a new use, if applicable.

4. A legal description of the point of diversion and the place of use.

5. The monthly volume(s) and flow rate(s) of the water supply to be diverted, withdrawn, or impounded, and the monthly volume(s) to be consumed; however the Office of the Engineer may require a more frequent quantification time step.

6. The monthly historic diverted, withdrawn, or impounded volume(s) and flow rate(s) and the historically

consumed volume(s) of the water right(s) to be changed to a new use, if applicable; however, the Office of the Engineer may require a more frequent quantification time step.

7. The calculations, references and methodologies used to determine the volume(s) and flow rate(s) in subsections (5) and (6) above.

8. Identification of physical water availability and existing legal demands on the source of supply of water.

9. Evidence that the proposed means of diversion, construction, and operation of the appropriation Works are adequate.

10. Evidence of possessory interest or the written consent of the person with the possessory interest in the property where the water is to be put to beneficial use, diverted, conveyed, impounded, stored, transported, withdrawn, used, and distributed.

11. Information showing that the water quantity or quality of an Appropriator will not be adversely affected, if applicable.

12. A United States Geological Survey (USGS) quadrangle map or United States Department of Agriculture (USDA) aerial photo must be included with the application.

a. The following items shall be clearly identified on the map:

(1) North arrow;

(2) Scale bar;

(3) Section corners and numbers;

(4) Township and range numbers;

(5) Property lines and ownership;

(6) Source(s);

(7) Point(s) of diversion;

(8) Means of conveyance;

(9) Place(s) of use;

(10) Place(s) of storage, if applicable:

(11) Surface water features;

(12) Measurement and instrument locations associated with the application; and

(13) The place(s) of use of all associated and supplemental water rights.

b. If the application is for a Change in Use, the site map shall also show the historic point(s) of diversion,

place(s) of use, and place(s) of storage, as applicable.

c. Additional maps shall be submitted if the information on one map cannot convey the required information clearly and shall be of the same scale so the maps can be overlain.

1-1-111. Groundwater Diversion Standards

1. Wells:

a. Persons that drill, make, or construct Wells, including monitoring Wells, on the Reservation shall comply with Title 37 Chapter 43, MCA, and ARM 36 Chapter 21 licensing, conduct, and regulatory requirements, or any successor provisions promulgated in State law.

b. All Well construction on the Reservation shall meet the standards set forth in ARM 36 Chapter 21, or any successor provisions promulgated in State law.

c. Construction and operations of all Wells must comply with all applicable federal, State, Tribal, and local environmental regulations.

2. Developed Springs:

a. All Developed Spring collection components, including but not limited to infiltration galleries, infiltration basins, and French drains, shall be installed and buried under the surface of the ground.

b. All means of storage and conveyance, including but not limited to supply pipes, cisterns, and pump housings, shall be sealed and made impervious to water and designed in a manner that protects the source from backflow and surface contamination.

c. Open pits, ponds, or excavations shall not be used as a means of diversion for Developed Springs.

d. Construction and operation of all Developed Springs must comply with all applicable federal, State, Tribal, and local environmental regulations.

3. Aquifer Injection and Injection Wells are not allowed except when used exclusively for Heating/Cooling Exchange Wells.

1-1-112. Mitigation

1. Unless any provision of a Groundwater Management Area established pursuant to Section 1-1-109 of this Ordinance specifically requires Mitigation for any of the following categories of Appropriation Rights, Mitigation is not required for Appropriation of:

a. Redundant or Substitute Wells pursuant to Section 2-2-115 of this Ordinance;

b. Stock Water Allowances pursuant to Section 2-2-116 of this Ordinance;

c. Domestic Allowances pursuant to Section 2-2-117 of this Ordinance;

d. Heating/Cooling Exchange Wells pursuant Section to 2-2-119 of this Ordinance;

e. Temporary Emergency Appropriations pursuant to Section 2-2-120 of this Ordinance; or

f. Short-term uses of an Appropriation Right pursuant to Sections 2-2-121 and 2-2-122 of this Ordinance.

2. Mitigation is not required for Appropriation of Flathead System Compact Water Pursuant to 2-2-118 of this Ordinance.

3. Any Appropriation Right that results in a Net Depletion of either surface water or Groundwater shall offset the entire Net Depletion that results in adverse effect to any Appropriator through the use of Mitigation pursuant to a Mitigation Plan.

4. An adverse effect to a Wetland Protective Appropriation Right recognized in Article III.C.1.f of the Compact or a Wetland Protective Appropriation Right issued pursuant to Section 2-2-123 of this Ordinance that requires Mitigation shall include, but is not limited to, a water supply alteration that would cause:

a. reductions of the Wetland boundary in excess of the normal range of variability in water; or

b. unnatural Wetland plant community change.

5. A Mitigation Plan must include:

a. a plan of use for the proposed Appropriation Right for which the Mitigation Plan is required;

b. an identification of the location, volume, and timing (by monthly or more frequent time step as determined by the Engineer) of the adverse effect to be mitigated;

c. if necessary, evidence that an application for a Change in Use has been submitted;

d. the amount of water reallocated through exchange or substitution that is required to mitigate the adverse effect;

e. evidence that the water for Mitigation is legally and physically available;

f. evidence of how the Mitigation Plan will offset the Net Depletion in a manner that will offset any adverse effect to any Appropriator; and

g. evidence that the necessary water quality permits, if any, have been applied for pursuant to the Tribal Water Quality Management Ordinance.

6. No applicant for an Appropriation Right shall be required to provide more Mitigation than the quantity needed to offset the adverse effects of that proposed new Appropriation Right on any Appropriator.

7. Compliance with a Mitigation Plan and proof of any water quality permit(s) issued pursuant to the Tribal

Water Quality Management Ordinance, if applicable, must be included as a written condition on any Appropriation Right or Change in Use authorization that is conditioned on Mitigation.

8. If compliance with a Mitigation Plan or any applicable water quality permit(s) issued pursuant to the Tribal Water Quality Management Ordinance ceases or terminates, the holder of the Appropriation Right conditioned on compliance with the Mitigation Plan shall immediately notify the Office of the Engineer, and use of the Appropriation Right shall be suspended immediately until a new Mitigation Plan is approved and implemented pursuant to this Ordinance.

1-1-113. Codification, Severability and Defense.

1. The provisions of this Ordinance are severable, and a finding of invalidity of one or more provisions hereof shall not affect the validity of the remaining provisions.

2. This Ordinance is intended to function in conjunction with the legislation adopted by the Confederated Salish and Kootenai Tribes pursuant to Tribal approval of the Confederated Salish and Kootenai Tribes-Montana Compact and the Montana Water Use Act of 1973 to effectuate Unitary administration and Management on the Flathead Indian Reservation. Should those portions of the parallel Tribal Legislation be amended by subsequent legislation without contemporaneous and materially identical State amendment to this Ordinance, this Ordinance shall govern the use of waters within the Reservation, irrespective of the amended provisions of Tribal law, until such time as the laws of the Tribes and the State are rendered mutually consistent. Similarly, should this Ordinance be amended without contemporaneous and materially identical amendment of the provisions adopted into Tribal law, those pre-existing provisions of Tribal law shall govern the use of waters within the Reservation, irrespective of the amended provisions, until such time as the laws of the Tribes and the State are rendered mutually consistent.

3. Any amendment to this Ordinance that is approved by the Tribes, the State and the Secretary is pursuant to, and shall not be deemed a modification of, the Compact.

4. The State adopts this Ordinance only after concluding its provisions are lawful. Should the legality of the Ordinance, or parallel Tribal legislation, or any provision thereof be challenged in any court, the parties shall use their best effort jointly to defend the enforceability of the Ordinance, the parallel Tribal legislation and each of the respective provisions.

1-1-114. Effective Date. This Ordinance and each provision hereof according to its terms shall take on the Effective Date of the Compact.

PART 2 - UNITARY ADMINISTRATION AND MANAGEMENT

1-2-101. Purpose. The purpose of this Part is to establish the processes applicable to all surface and Groundwater use within the exterior boundaries of the Flathead Indian Reservation.

1-2-102. Establishment and Composition of the Water Management Board. Pursuant to Article IV.I of the Compact, the Water Management Board is established.

1-2-103. Qualifications of Board Members. As set forth in Article IV.I.2.f of the Compact:

1. A Board member shall be over 18 years of age.

2. A Board member shall be a Reservation resident, which means, for the purposes of filling a position on the Board, an individual who:

a. does business within Flathead Indian Reservation boundaries,

b. is domiciled within Flathead Indian Reservation boundaries, or

c. owns and maintains a seasonal residence within Flathead Indian Reservation boundaries.

3. No elected official of the State of Montana, or any political subdivision thereof, or of the United States, or of the Tribes is eligible for nomination to the Board while holding such elective office. However, a nominee for Board membership shall not be disqualified by reason of the fact that he or she is an employee or contractor of the State of Montana or any political subdivision thereof, or of the Tribes, or of the United States.

4. A Board member shall have education and experience in one or more of the following fields: natural resources management, public administration, agriculture, engineering, commerce or finance, hydrology, biological sciences, water law or water policy.

5. No Board member may vote on any application or appeal that the member participated in personally and substantially in any non-Board capacity.

1-2-104. Public Meetings and Records. As set forth in Article IV.I.7 of the Compact:

1. Notwithstanding any other provisions of law, the Board is a public agency for purposes of the applicability of State and Tribal right to know laws.

2. All regular and special meetings of the Board, including all hearings conducted by the Office of the Engineer or the Board pursuant to the provisions of Chapter 2 Part 2, and Chapter 3 of this Ordinance, shall be open to the observation of the general public pursuant to State and Tribal open meeting laws. Where there is a conflict of laws, the law that provides for greater openness to the public applies.

3. Where no more specific notice provisions are set forth in this Ordinance, notice of any meeting,

including a draft agenda, shall be provided to the public in a manner and on a timeframe consistent with the criteria set forth in State and Tribal law. Where there is a conflict of laws, the law that provides for earlier notice shall apply.

4. The Board shall keep the following records:

a. minutes of all meetings;

b. recordings of all hearings conducted by the Board or the Office of the Engineer pursuant to the provisions of Chapter 2 Part 2, and Chapter 3 of this Ordinance;

c. all documents filed with or generated by the Board or the Office of the Engineer pursuant to this Ordinance;

d. any other records required by applicable provisions of State or Tribal law, provided that if there is a conflict of laws, the law that provides for more expansive record retention shall apply.

5. All Board records are public records and shall be made available to the public for inspection under such reasonable terms and conditions as the Board shall establish.

1-2-105. Compensation and Expenses of the Board. As set forth in Article IV.I.2.h of the Compact, each Board member shall receive such compensation for services and reimbursement for expenses for attendance at Board meetings as shall be fixed by the State and the Tribal Council for the Board members appointed by the same. The compensation for the fifth Board member shall set jointly by the State and the Tribal Council. The compensation and expenses of the Federal ex officio member shall be paid by the United States.

1-2-106. Quorum and Voting of the Board. As set forth in Article IV.I.3 of the Compact, four voting members of the Board shall constitute a quorum. No Board action may be voted upon in the absence of a quorum. All Board decisions shall be by affirmative vote of a majority of the Board. If a proposal put to a vote of a quorum of Board members ends in a tie vote, the proposal, or matter under consideration is deemed disapproved or denied.

1-2-107. Powers and Duties of the Board.

1. The Board shall have those powers and duties set forth in Article IV.I.4 and 5 of the Compact and in this Ordinance, including those powers necessary and proper to carry out all Board responsibilities as set forth in the Compact and this Ordinance.

2. As set forth in the Compact, the Board shall have exclusive jurisdiction to resolve any controversy as between the Parties or between or among holders of Appropriation Rights and Existing Uses on the Reservation

over the meaning and interpretation of the Compact and this Ordinance.

1-2-108. Technical Assistance to the Board and the Engineer. The NRD and the DNRC shall, within the limits of their respective expertise and resources, and when so requested by the Board or the Office of the Engineer, collect, compile, and analyze information related to waters of the Reservation, their use, and the Works associated with their use, and produce reports and provide technical assistance and advice to the Board or the Office of the Engineer.

1-2-109. Qualifications of the Water Engineer.

1. The Water Engineer shall be a professional in one or more of the following water resources or management related fields:

a. water resources management;

b. hydrology;

c. hydrogeology;

d. environmental science;

e. business or public administration;

f. biological science;

g. civil engineering;

h. environmental engineering; or

i. law.

2. The Water Engineer shall have a minimum of a bachelor's degree with 10 years of increasingly responsible experience, including three years of management experience, or a master's degree with seven years of increasingly responsible experience, including three years of management experience, or an appropriate combination of education and experience.

3. The Water Engineer shall have the skill to deal with a diverse and sometimes contentious public.

4. The Water Engineer shall have the ability to:

a. successfully manage the water resources staff;

b. provide technical assistance to the Board; and

c. act as a hearings officer and document decisions and orders in writing.

1-2-110. Duties of the Engineer. The Engineer shall be an employee of the Board and shall exercise the duties set forth in the Compact and this Ordinance, and as assigned by the Board pursuant to the Compact and

this Ordinance. These duties include, but are not limited to:

1. The administration of water rights on the Reservation, and the enforcement of the terms of this Ordinance and the conditions of all Appropriation Rights, determinations, orders, regulations, plans, policies, guidelines, and other actions taken by the Engineer or the Board, pursuant to the Compact and this Ordinance;

2. Coordination with the Project Manager, as far as practicable, of the operations of the FIIP with the administration and enforcement of water rights outside of the FIIP;

3. The supervision and management of Staff; and

4. The development and submission to the Board of budget requests for approval by the Board and forwarding to the Tribes and State for the purpose of securing necessary appropriations.

1-2-111. Immunity from Suit. Members of the Board, the Engineer, any Designee, any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance, and any Staff shall be immune from suit for damages arising from the lawful discharge of an official duty associated with the carrying out of powers and duties set forth in the Compact or this Ordinance relating to the authorization, administration or enforcement of water rights on the Reservation.

1-2-112. Filing Fees. A filing fee shall be paid at the time an application is filed with the Office of the Engineer under Section 2-1-107, 2-2-104, 2-2-115, 2-2-116, 2-2-117, 2-2-118, 2-2-119, 2-2-123, or 2-2-124 of this Ordinance. The amount of the fee shall be the same as the fee charged by DNRC for the same type of application under State law, as those fees may be modified from time to time by the DNRC. The Board shall post notice of the applicable amount of these fees at the Office of the Engineer and on the Board's website.

## CHAPTER II WATER USE

### PART 1. GENERAL PROVISIONS

2-1-101. Registration of Uses of the Tribal Water Right in Existence as of the Effective Date of the Compact.

1. Pursuant to Article III.C.1.b of the Compact, the Tribes, each Tribal Member, and each Allottee who claims to have an Existing Use of waters of the Reservation which is part of the Tribal Water Right shall file a registration of Existing Use of the Tribal Water Right with the Engineer. Uses of the Tribal Water Right for which abstracts are appended to this Compact, including uses on the FIIP, are exempt from this registration requirement.

2. Historically irrigated allotments with serviceable delivery systems that are held by individuals and in

trust by the United States, and are not served by the FIIP, shall be eligible to be registered pursuant to the provisions of Sections 2-1-101 et seq. of this Ordinance even if such allotments are not being irrigated on the Effective Date of the Compact.

3. The NRD shall provide assistance to the Tribes, Tribal Members, and Allottees in preparing registrations of Existing Uses of the Tribal Water Right for filing.

4. No Tribal Member or Allottee may exercise, for the same water use, both a registration of Existing Use of the Tribal Water Right and a Water Right Recognized Under State Law.

2-1-102. Process for Registration of Existing Use of the Tribal Water Right.

1. The Tribes, Tribal Members, and Allottees claiming a use of water that falls under the terms of Section 2-1-101 of this Ordinance shall, within five years of the Effective Date of this Ordinance, file a Registration Form with the Board documenting the registration of Existing Use of the Tribal Water Right and identifying:

a. the rate and volume of water used;

b. the source of supply for the use;

c. the point of diversion by legal land description;

d. the place of use by legal land description;

e. the period of use

f. the period of diversion;

g. the place of storage (if applicable);

h. the capacity of storage (if applicable);

i. the purpose; and

j. the means of diversion.

2. Upon receipt, the Board shall transmit the Registration Form to the Office of the Engineer.

3. Upon receipt of the Registration Form, the Office of the Engineer shall review the Registration Form within 180 days and may either issue a Registration Certificate or return a defective Registration Form to the filer, together with the reasons for returning it. Upon receiving a corrected Registration Form, the Office of the Engineer has 90 days from the certified receipt of the corrected Registration Form to issue a Registration Certificate or reject the registration. If the Office of the Engineer neither issues a Registration Certificate nor rejects the registration within the initial 180 day review period, the Registration Form shall be deemed approved and the Board shall issue a Registration Certificate. If the Office of the Engineer neither issues a Registration Certificate

nor rejects the registration within 30 days of certified receipt of a corrected Registration Form, the Registration Form shall be deemed approved and the Board shall issue a Registration Certificate.

4. Any Person filing a Registration Form or a corrected Registration Form with the Office of the Engineer pursuant to subsections (1) and (3) of this Section who is dissatisfied with the rejection of that corrected Registration Form by the Office of the Engineer pursuant to subsection (3) of this Section may appeal that rejection to the Board by filing a notice of appeal to the Board within 30 days of the rejection of the corrected Registration Form. To be filed, a notice must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing. Immediately upon receipt by the Board, the notice of appeal shall be date stamped.

5. Any appeal to the Board filed pursuant to subsection (4) of this Section shall be conducted pursuant to the provisions of Section 3-1-104 of this Ordinance.

2-1-103. Fee for Filing Registration of Existing Use of the Tribal Water Right. The Board shall not charge a fee for the processing of registrations or corrected registrations of Existing Uses of the Tribal Water Right.

2-1-104. Tribal Member and Allottee Entitlements Pursuant to 25 U.S.C. Section 381. All Tribal Members' and Allottees' entitlements pursuant to 25 U.S.C. Section 381 are hereby recognized and confirmed. The attributes of these entitlements shall be defined through either:

1. the process set forth in Section 2-1-101 et seq. of this Ordinance, if the Tribal Member or Allottee with an entitlement pursuant to 25 U.S.C. Section 381 also has a use of water eligible for the registration process set forth in those sections of this Ordinance; or

2. by applying for a New Appropriation as provided in Section 2-2-101 et. seq. of this Ordinance or by applying to develop a use of Flathead System Compact Water as provided in Section 2-2-118 of this Ordinance, if the Tribal Member or Allottee with an entitlement pursuant to 25 U.S.C. Section 381 does not have a use of water eligible for the registration process set forth in Section 2-1-101 et seq. of this Ordinance.

2-1-105. Tribal, Tribal Member and Allottee Challenge of a Registration Certificate Issued by the Office of the Engineer. The Tribes, Tribal Members, and Allottees may seek judicial review of any final decision by the Board pursuant to Section 2-1-102(4) of this Ordinance by filing a petition for judicial review with the Tribal Court of the Tribes within 30 days of the issuance of the final Board decision. In considering the petition, the Board's legal conclusions shall be reviewed for correctness and its factual findings for abuse of discretion.

2-1-106. Registration of Certain Other Previously Unrecorded Existing Uses. Persons who have Existing Uses on the Reservation as of the effective date of this Ordinance shall register such Existing Uses with the Board if those uses:

1. Were not required to be filed, pursuant to 85-2-222, MCA, and in fact were not filed as claims in the Montana General Stream Adjudication for a pre-1973 use of water arising under State law; or

2. Were developed on or after July 1, 1973, at a volume and flow rate that would qualify as an exception to the permit requirements of 85-2-306, MCA, and for which a notice of completion of Groundwater development (DNRC Form 602) or an application for provisional permit for completed Stock Water pit or reservoir (DNRC Form 605) was filed with the DNRC but not processed by the DNRC.

3. Were developed after July 1, 1973, at a volume and flow rate that would qualify as an exception to the permit requirements of 85-2-306, MCA, and for which a notice of completion of Groundwater development (DNRC Form 602) or an application for provisional permit for completed Stock Water pit or reservoir (DNRC Form 605) was not filed with the DNRC.

2-1-107. Process for Registration of Certain Other Previously Unrecorded Existing Uses.

1. Each Person claiming an Existing Use of water that falls under the terms of Section 2-1-106 of this Ordinance shall, within 180 days of the effective date of this Ordinance, file a Registration Form with the Board documenting that the Existing Use is for a purpose and with a flow rate and volume that falls within the terms of Section 2-1-106, and identifying:

a. the date of first use of the water;

b. the source of supply for the use;

c. the point of diversion by legal land description;

d. the place of use by legal land description; and

e. the period of use.

2. Within 30 days of the Effective Date, the DNRC shall transmit to the Board all filed but not processed completion notices (DNRC Form 602 or 605) it has received for water uses excepted from the permitting requirements of State law developed within the boundaries of the Reservation after August 22, 1996. The transmission of these notices shall constitute compliance with Section 2-1-107(1) of this Ordinance for those uses eligible for registration pursuant to Section 2-1-106(2) of this Ordinance. No additional fee shall be required for the processing of the forms transmitted by the DNRC.

3. Upon receipt, the Board shall transmit the Registration Form to the Office of the Engineer.

4. Upon receipt of the Registration Form, the Office of the Engineer shall review the Registration Form within 180 days and may either issue a Registration Certificate or return a defective Registration Form to the filer, together with the reasons for returning it. If a corrected Registration Form is submitted within 30 days of its return by the Engineer, no new filing fee shall be required. Upon receiving a corrected Registration Form, the Office of the Engineer has 90 days from the certified receipt of the corrected Registration Form to issue a Registration Certificate or reject the registration. If the Office of the Engineer neither issue a Registration Certificate nor rejects the registration within the initial 180 day review period, the Registration Form shall be deemed approved and the Board shall issue a Registration Certificate. If the Office of the Engineer neither issues a Registration Certificate nor rejects the registration within 90 days of certified receipt of a corrected Registration Form, the Registration Form shall be deemed approved and the Board shall issue a Registration Certificate.

5. For any use registered under Section 2-1-106(1) of this Ordinance, the priority date of the use shall be the date of first beneficial use, and such a date shall be reflected on the Registration Certificate.

6. For any use under Section 2-1-106(2) of this Ordinance, the priority date for the use shall be the date of filing of the appropriate form, and such a date shall be reflected on the Registration Certificate.

7. For any use under Section 2-1-106(3) of this Ordinance, the priority date for the use shall be the Effective Date of the Compact, and that date shall be reflected on the Registration Certificate.

8. Any Person filing a corrected Registration Form with the Office of the Engineer pursuant to subsection (2) of this Section who is dissatisfied with the rejection of that corrected Registration Form by the Office of the Engineer pursuant to subsection (2) of this Section may appeal that rejection to the Board by filing a notice of appeal to the Board within 30 days of the rejection of the corrected Registration Form. To be filed, a notice must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing. Immediately upon receipt by the Board, the notice of appeal shall be date stamped.

9. Any appeal to the Board filed pursuant to subsection (6) of this Section shall be conducted pursuant to the provisions of Section 3-1-104 of this Ordinance.

2-1-108. Failure to Register an Existing Use of Water. Failure to register an Existing Use that is subject to registration as provided for under Sections 2-1-101, 2-1-102, and 2-1-106(2) and (3) of this Ordinance, shall divest the holder of the Existing Use of any legal protections otherwise afforded under the Compact and this

Ordinance, to the extent not inconsistent with federal law.

2-1-109. Limitation to Beneficial Use. Beneficial use shall be the basis, measure and limit to Appropriation Rights issued pursuant to this Ordinance.

2-1-110. No Adverse Possession. No right to use water within the Reservation may be acquired by prescription or by adverse possession of use.

2-1-111. Abandonment of Appropriation Right.

1. No part of the Tribal Water Right is subject to abandonment by nonuse.

2. If an Appropriator, other than a user of any portion of the Tribal Water Right, ceases to use all or a part of an Appropriation Right, or any Existing Use, with the intention of wholly or partially abandoning the right, or if the appropriator ceases using the right according to its terms and conditions with the intention of not complying with those terms and conditions, the Appropriation Right or Existing Use is, to the extent of the nonuse, considered abandoned and must immediately expire.

3. If an Appropriator, other than a user of any portion of the Tribal Water Right, ceases to use all or part of an Appropriation Right or Existing Use, or ceases using the Appropriation Right or Existing Use according to its terms and conditions for a period of 10 successive years and there was water available for use, there is a prima facie presumption that the Appropriator has abandoned the right for the part not used.

4. If an Appropriator ceases to use all or part of an Appropriation Right or Existing Use in compliance with a candidate conservation agreement initiated pursuant to 50 CFR 17.32 or because the land to which the water is applied to a beneficial use is contracted under a state, tribal, or federal conservation, mitigation, or set-aside program:

a. the land set-aside and resulting reduction in use of the Appropriation Right or Existing Use from the conservation, mitigation, or set-aside program shall not be construed as an intent by the appropriator to wholly or partially abandon the Appropriation Right or Existing Use or to not comply with the terms and conditions attached to the right; and

b. the period of nonuse that occurs for part or all of the Appropriation Right or Existing Use as a result of the conservation, mitigation, or set-aside program shall not create and shall not be added to any previous period of nonuse to create a prima facie presumption of abandonment.

2-1-112. Procedure for Declaring Abandonment.

1. An Appropriator who claims to have been or alleges will be injured by the resumption of use of an

Appropriation Right or Existing Use alleged to have been abandoned may file a petition with the Office of the Engineer to declare the Appropriation Right or Existing Use abandoned in whole or in part. Upon receipt of the petition, the Office of the Engineer shall date stamp it.

2. If the Engineer or Designee finds that the petition provides enough information to give rise to a question of abandonment, the petition shall be posted on the Board's website within 10 working days of the determination of validity. If the Engineer or Designee finds that the petition fails to provide enough information to give rise to a question of abandonment, the petition shall be rejected.

3. Upon a finding of validity pursuant to subsection (2) of this Section, a hearing shall be set within 180 days of the determination of validity, or any extended period of time, not to exceed 90 days, granted by the Engineer, for the Engineer or Designee to determine whether the Appropriation Right or Existing Use has been abandoned. Discovery prior to hearing will be as provided by the Engineer or Designee, and may commence following the notice of the hearing.

4. The owner of the right alleged to have been abandoned shall be personally served notice of the hearing by the Office of the Engineer and the hearing shall be publicly noticed by the Office of the Engineer once via a legal notice in a local newspaper of general circulation and posted by the Office of the Engineer on the Board's website for a period of 10 days commencing not less than 30 days from the date of the hearing.

5. At the hearing on the petition, the burden of proof shall be on the petitioner who must prove by a preponderance of the evidence that the Appropriation Right or Existing Use has been abandoned pursuant to Section 2-1-111 of this Ordinance, unless a prima facie presumption of abandonment has arisen pursuant to Section 2-1-111(3). In such circumstances, the burden of proof is shifted to the owner of the right alleged to have been abandoned, who must prove by a preponderance of the evidence a lack of intent to abandon the right in question.

6. The hearing shall be recorded electronically and an official record maintained. All evidence that, in the opinion of the Engineer or Designee, possesses probative value shall be admitted, including hearsay, if it is the type of evidence commonly relied upon by reasonably prudent Persons in the conduct of their normal business affairs. Rules of privilege recognized by law shall be given effect. Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded.

7. A written decision by the Engineer or Designee shall be rendered within 60 days of the hearing, disseminated to the parties, and posted by the Office of the Engineer on the Board's website within 10 days of

its issuance. If the individual who conducted the hearing becomes unavailable to the Office of the Engineer, a decision may be prepared by an individual who has read the record only if the demeanor of witnesses is considered immaterial by all parties; if any party considers the demeanor of any witness to be material to the resolution of the appeal, a new hearing must be held.

8. Any party to the abandonment hearing dissatisfied with the decision of the Engineer or Designee may appeal to the Board (and become an appellant) and obtain review of the Engineer's or Designee's decision. A notice of appeal to the Board must be filed with the Board within 30 days of the Engineer's or Designee's decision. To be filed, a notice must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing. Immediately upon receipt by the Board, the notice of appeal shall be date stamped.

9. Appeal to the Board pursuant to subsection (8) of this Section, shall be made and resolved pursuant to the provisions of Section 2-2-111 of this Ordinance.

10. Any petitioner whose petition is rejected by the Engineer or Designee as failing to provide enough information to give rise to a question of abandonment may appeal the Engineer's decision to the Board pursuant to the provisions of Section 3-1-104 of this Ordinance.

2-1-113. Prevention of Waste and Interference with Lawful Use.

1. Waters within the Reservation may not be wasted, nor may water be used unlawfully, nor may a lawful use of water be interfered with.

2. All facilities, Works and equipment associated with the withdrawal, impoundment, pumping, diversion, drainage, or transmission of waters on the Reservation shall be so constructed, installed, and maintained as to prevent the Waste, contamination, or pollution of surface and Groundwater and to avoid injury to the lands and property of others. All wells, producing and non-producing, which may contaminate other surface or Groundwater must be properly abandoned or upgraded with a sanitary seal, in accordance with the water well criteria incorporated by reference in Section 1-1-111 of this Ordinance. All flowing wells shall be capped or equipped with valves so that the flow of water can be stopped when the water is not being put to beneficial use.

3. The Board, on its own initiative or through the Office of the Engineer, may require the recipient of any Appropriation Right issued pursuant to this Ordinance to construct or install a weir, head gate, valve, meter, gauge, or other reasonable and appropriate device for the control and measurement of water and for the

prevention of Waste.

2-1-114. Issuance of Appropriation Right Does Not Constitute Permission to Trespass. The issuance of an Appropriation Right pursuant to this Ordinance does not constitute a license or permission to trespass on land which the holder of the Appropriation Right does not otherwise have a legal right to access, not does it constitute a ditch right.

2-1-115. Development of Enforceable Schedule for the Tribes' Other Instream Flow Rights.

1. As set forth in the Compact, each of the Tribes' instream flow rights identified in Article III.C.1.d.iii of the Compact shall not be enforceable until after an enforceable schedule for that stream reach is promulgated pursuant to the process set forth in this Section. This process shall not commence for any stream reach until the Compact has been finally approved by the Montana Water Court, and until the Montana Water Court has issued a final decree for the water court basin (76L or 76LJ) in which that stream reach lies, including the expiration of all time for appeals, or the resolution of any such appeal, whichever date is latest (the "Eligibility Date").

2. At any time after the Eligibility Date, the Tribes may initiate the enforceable schedule process for any given stream reach included in the rights identified in Article III.C.1.d.iii of the Compact by:

a. providing notice to water rights holders in the reach of the Tribes' initiation of the process to finalize and implement the enforceable schedule;

b. developing a full summary of all Water Rights Arising Under State Law in the reach, including a monthly time-step pattern of water use;

c. developing a summary of streamflow conditions, at or near each enforceable schedule compliance point within the reach area, utilizing:

i. streamflow gaging information; or

ii. an accepted hydrologic analysis procedure to estimate streamflow conditions. The method to develop streamflow information will be based on the professional judgment of the Tribes' hydrologist responsible for coordinating the enforceable schedule process; and

d. preparing a report on the availability of water to fulfill the Tribes' instream flow water right for that reach area.

3. The Tribes shall prepare each proposed enforceable schedule based on a water budget that allows valid water rights to be exercised.

4. The Tribes shall hold one or more public meetings, and provide timely advanced notice to affected

water users of each such meeting, to report on the completion of the water availability study and the proposed enforceable schedule for that reach area.

5. The Tribes shall consider the public comment received either at the public meeting(s) or within 30 days thereafter, and shall finalize the proposed enforceable schedule for a given reach area no fewer than 45 days after the day of the last public meeting.

6. The Tribes shall provide written notice to the Engineer of the finalized proposed enforceable schedule, including an explanation of the technical basis therefore. Upon receipt, the Engineer shall forward the proposed enforceable schedule to Staff for review.

7. Staff, using information from the written notice, as well as their own compilation of independent resources and analysis, if available, shall issue a recommended decision as to whether to adopt the enforceable schedule within 90 days of the date of the written notice provided by the Tribes pursuant to subsection (6) of this Section.

8. If the recommended decision is to adopt the enforceable schedule, a summary of the proposed enforceable schedule and the recommended decision shall be publicly noticed by the Office of the Engineer once via a legal notice in a local newspaper of general circulation and posted by the Office of the Engineer on the Board's website for a period not less than 45 days from the date the recommendation is issued. A summary of the proposed enforceable schedule and the recommended decision shall also be distributed electronically to individuals or entities who have registered with the Board to receive electronic notice. If no objections are filed within 45 days of the initial Publication of the recommended decision by the Office of the Engineer, or if all filed objections are unconditionally withdrawn prior to being ruled upon, the application shall be granted by the Engineer or Designee within 10 days after expiration of the time for filing objections or after the unconditional withdrawal of the last objection, whichever date is later.

9. Objections to a proposed enforceable schedule may be filed only by holders of water rights in the particular stream reach for which the enforceable schedule is proposed. The only cognizable ground for objection is that the proposed enforceable schedule will have an adverse effect on the objector's water right. An objection must describe the alleged adverse effect on the objector's water right. The burden of proof shall be on the objector.

10. An objector or the Tribes may elect to have any valid objection decided on the record or after hearing. If the objector elects to have a hearing, that request must be made at the same time as the filing of the objection

or the objector's right to a hearing is waived. The Tribes must invoke the right to a hearing within 10 days of receiving notice of the objection or the Tribes' right to a hearing is waived.

11. Discovery prior to hearing will be as provided by the Engineer or Designee, and may commence following the receipt of a valid objection.

12. The Engineer or Designee, after issuance of notice of hearing, may not communicate with any party to that case or any party's representative(s) in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate.

13. The hearing shall be recorded electronically and an official record maintained.

14. All evidence that, in the opinion of the Engineer or Designee, possesses probative value shall be admitted, including hearsay, if it is the type of evidence commonly relied upon by reasonably prudent Persons in the conduct of their normal business affairs. Rules of privilege recognized by law shall be given effect. Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded.

15. A written decision by the Engineer or Designee shall be rendered within 60 days of the hearing, disseminated to the parties, and posted by the Office of the Engineer on the Board's website within 10 days of its issuance. If the individual who conducted the hearing becomes unavailable to the Office of the Engineer, a decision may be prepared by an individual who has read the record only if the demeanor of witnesses is considered immaterial by all parties to the case. If any party considers the demeanor of any witness to be material to the resolution of the appeal, a new hearing must be held.

16. The Tribes or any objector dissatisfied with the final decision of the Engineer or Designee may appeal to the Board (and become an appellant) and obtain review of the Engineer's or Designee's decision. A notice of appeal to the Board must be filed with the Board within 30 days of the Engineer's or Designee's decision. To be filed, a notice must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing. Immediately upon receipt by the Board, the notice of appeal shall be date stamped. Appeal to the Board shall be resolved pursuant to the provisions of Section 2-2-111 of this Ordinance.

17. If the recommended decision is to reject the proposed enforceable schedule, the Tribes may withdraw the proposed enforceable schedule within 10 days of the issuance of the recommended decision, or may appeal the recommended decision to the Engineer by filing a notice of appeal within 30 days of issuance of the recommended decision. The Tribes may elect to have the appeal decided on the record, after submission of

additional evidence and argument, or after hearing. If the Tribes elect to have a hearing, that request must be made at the same time as the filing of the notice of appeal or the right to a hearing is waived. The notice of appeal must specify those parts of the recommended decision claimed to be in error.

18. Within 60 days from the filing of the notice of appeal, or any extended period of time, not to exceed 60 days, granted by the Engineer or Designee, the Tribes may submit additional factual evidence and legal argument in support of the proposed enforceable schedule. Staff who issued the recommended decision shall have 45 days from the Tribes' submission to revise, amend, or affirm the recommended decision in a second recommended decision that explains in writing the rationale for the second recommended decision.

19. If the recommended decision or second recommended decision is to reject the proposed enforceable schedule and no notice of appeal is filed pursuant to this Section, the proposed enforceable schedule shall be deemed rejected the day after expiration of the time for filing a notice of appeal. The rejection of a proposed enforceable schedule does not preclude the Tribes from filing another proposed enforceable schedule for the same or any other stream reach identified in the rights set forth in Article III.C.1.d.iii of the Compact.

20. The Tribes bear the burden of demonstrating to the Engineer or Designee by a preponderance of the evidence, whether a hearing is held or not, that the recommended decision or second recommended decision is in error.

21. If the Tribes request a hearing before the Engineer or Designee, a hearing shall be held no later than the latest of the following:

a. 90 days after the filing of the notice of appeal; or

b. 30 days after the issuance of a second recommended decision pursuant to subsection (2) of this Section, whichever is later.

22. The hearing shall be recorded electronically and an official record maintained. All evidence that, in the opinion of the Engineer or Designee, possesses probative value shall be admitted, including hearsay, if it is the type of evidence commonly relied upon by reasonably prudent Persons in the conduct of their normal business affairs. Rules of privilege recognized by law shall be given effect. Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded.

23. A decision by the Engineer or Designee to reverse, modify, or affirm the recommended decision or the second recommended decision shall be made in writing within 60 days after the later of:

a. the filing of a notice of appeal pursuant to subsection (1) of this Section;

b. the submission of additional evidence or legal argument pursuant to subsection (2) of this Section;

c. issuance of Staff's second recommended decision; or

d. the completion of the hearing.

24. If the Engineer or Designee reverses the recommended decision or the second recommended decision, and determines that the enforceable schedule should not have been rejected, the proposed enforceable schedule shall be publicly noticed to the public and processed pursuant to the provisions of subsections (8)-(16) of this Section.

25. If the Engineer or Designee affirms the recommended decision or the second recommended decision, resulting in the rejection of the proposed enforceable schedule, the Tribes may either accept that decision by withdrawing the proposed enforceable schedule or taking no further action, or may appeal that decision to the Board pursuant to Section 2-2-111 of this Ordinance. If no timely notice of appeal is filed, the proposed enforceable schedule shall be deemed rejected on the day after the expiration of the time to file the notice of appeal.

26. Any final Board decision on implementation of the enforceable schedule made pursuant to the process outlined in this Section may be appealed pursuant to Section 2-2-112 of this Ordinance.

PART 2. PERMIT AND CHANGE APPLICATION PROCESS

2-2-101. Appropriation Rights and Change in Use authorizations on the Reservation. After the Effective Date, a Person within the exterior boundaries of the Reservation may not Appropriate surface water or Groundwater for a new beneficial use, or change an Existing Use, or commence construction of diversion, impoundment, withdrawal, or related distribution Works except by applying for and receiving an Appropriation Right, or Change in Use authorization, from the Board.

2-2-102. Burden of Proof for Ground or Surface Water Permits and Change Authorizations.

1. For any application for an Appropriation Right or Change in Use that is not one of the categories of Appropriation Right identified in Sections 1-1-112(1) or 2-2-118 of this Ordinance, applicants for an Appropriation Right, or for a Change in Use authorization must prove by a preponderance of the evidence that the proposed new Appropriation Right or Change in Use authorization will not adversely affect any Appropriator.

2. For any application for an Appropriation Right or Change in Use that is not one of the categories of Appropriation Right identified in Sections 1-1-112(1) or 2-2-118 of this Ordinance, the Board, Engineer, or Designee may modify or condition the issuance of Appropriation Right or Change in Use authorization applied

for, to assure that:

a. the new Appropriation Right or Change in Use authorization will not adversely affect any Appropriator;

b. the proposed means of diversion, construction, and operation of the appropriation Works are adequate;

c. except in the case of instream flows or other non-consumptive uses, the applicant has the possessory interest or the written consent of the Person(s) with possessory interest in the property where the water is to be put to beneficial use;

d. the water quality of an Appropriator will not be adversely affected;

e. the proposed use will be consistent with the classification of water set for the source of supply pursuant to water quality standards established under the federal Clean Water Act, 33 USC Section 1251 et seq., and contained in regulations promulgated under the Confederated Salish and Kootenai Tribes' Water Quality Management Ordinance, Tribal Ordinance 89B; and

f. the proposed Appropriation Right or Change in Use authorization will not impair the ability of a discharge permit holder to satisfy effluent limitations set forth in a permit issued in accordance with water quality standards established under the federal Clean Water Act, 33 USC Section 1251 et seq., and contained in regulations promulgated under the Confederated Salish and Kootenai Tribes' Water Quality Management Ordinance, Tribal Ordinance 89B.

2-2-103. Pre-Application Meeting with Office of the Engineer. Prior to applying to the Board for a new Appropriation Right or Change in Use authorization, within the exterior boundaries of the Flathead Reservation, applicants may meet informally with Staff regarding the application process and information requirements.

2-2-104. Application to Board.

1. An applicant for a new Appropriation Right or Change in Use authorization must:

a. pay the appropriate application fee in the amount set by the Board;

b. fill out completely:

i. the Flathead Reservation Appropriation Right Application; or

ii. the Flathead Reservation Application for a Change in Use authorization; and

iii. all applicable addenda;

c. attach to each application all required maps; and

d. sign, date, and notarize or otherwise swear under appropriate oath to the accuracy of the contents of each application.

2. Upon the day of the receipt of an application, or amendment to an application, for a new Appropriation Right or Change in Use authorization, the Office of the Engineer must stamp it received.

3. If an application for a new Appropriation Right is ultimately granted, the priority date of the application is the date the application is stamped received by the Office of the Engineer.

4. All application forms may, upon recommendation by the Engineer, be modified by a unanimous vote of the Board. Any such modification is pursuant to and does not constitute a modification of this Ordinance or the Compact.

2-2-105. Adequate to Process Review.

1. Within 30 days of receipt by the Office of the Engineer of an application for a new Appropriation Right or Change in Use authorization, Staff shall review the application and make a determination whether the application is adequate to process. An application is adequate to process if it:

a. clearly identifies the proposed project; and

b. contains the information required by the following forms:

i. Flathead Reservation Appropriation Right Application, including for Groundwater applications Addendum B - "Flathead Reservation Groundwater Minimum Aquifer Testing Requirements"; or

ii. Flathead Reservation Application for a Change in Use authorization.

2. Staff may waive aquifer testing requirements if sufficient hydrogeologic information already exists on the source and in the location of the proposed development.

3. An application determined to be adequate to process shall be posted on the Board's website within 10 working days of the determination of adequacy.

2-2-106. Not Adequate to Process Determination.

1. If Staff determines an application for a new Appropriation Right or Change in Use authorization is not adequate to process, the Office of the Engineer shall send a letter to the applicant notifying the applicant of the defects in the application.

2. An applicant has 90 days from the date of mailing of the notice of inadequacy pursuant to subsection (1) of this Section to make the application adequate to process. An application for a new Appropriation Right whose defects are timely corrected and which is ultimately granted retains its priority of the date of the initial application.

3. Upon receipt of the information from the applicant to correct deficiencies, Staff must review the updated

application and make a determination within 30 days whether the application is adequate to process.

4. An application that is not timely made adequate to process, either through the applicant's failure to respond to the notice of inadequacy issued pursuant to subsection (1) of this Section within the timeframe set forth in subsection (2) of this Section, or by the applicant's failure to provide sufficient information in response to a notice of inadequacy issued pursuant to subsection (1) of this Section within the timeframe set forth in subsection (2) of this Section, shall be deemed denied.

5. An applicant who disagrees with the decision to deny may appeal that decision to the Board pursuant to Section 3-1-104 of this Ordinance. If such an appeal is filed, the Engineer shall be the appellee.

2-2-107. Application Analysis and Recommended Decision.

1. Prior to the expiration of the time periods set forth in Sections 2-2-105(1), 2-2-106(2), 2-2-106(3), or 2-2-108(2) of this Ordinance, Staff may meet informally with an applicant to discuss an application, including any proposed Mitigation Plan. The results of such meetings shall be documented by a summary memo prepared by Staff and included in the application file. An applicant may also submit a memo documenting the meeting, which becomes part of the application file. If an application submitted pursuant to Section 2-2-104 or a Mitigation Plan submitted pursuant to Section 2-2-108(2) of this Ordinance is amended during this informal process, the amended application shall be reviewed by an individual on Staff who was not involved in the informal process to determine whether the amendments are so substantial that they constitute a new application. If it is determined that the amended application constitutes a new application, that application must be reviewed in its entirety pursuant to Sections 2-2-105 and 2-2-106 of this Ordinance. A new application fee must be submitted. A determination that an application amendment is so substantial as to constitute a new application may be appealed to the Engineer pursuant to Section 2-2-109 of this Ordinance.

2. Staff shall analyze an application determined to be adequate to process pursuant to Section 2-2-105 of this Ordinance within 180 days of the determination of adequacy using tools or techniques that may include:

a. independent resources compiled by Staff (including, but not limited to, Water Resources Surveys and field notes, aerial photographs, water rights decrees, stream gauging records, well logs, and water rights records);

b. water use records (water measurement, ranch logs, etc.) submitted by the applicant;

c. field inspection by Staff;

d. hydrologic or geohydrologic evaluation completed by Staff, provided that all model results, if any, shall be documented.

3. All information relied on by Staff in analyzing an application pursuant to this Section shall be documented in the application file.

4. Staff, using information from the application as well as their own compilation of independent resources and analysis, shall draft a recommended decision with findings of fact and conclusions of law determining:

a. whether the proposed Appropriation Right or Change in Use authorization will cause adverse effect to any Appropriator; and

b. whether and, if so, what amount of Mitigation is required before the proposed Appropriation Right or Change in Use authorization may be issued.

5. If the recommended decision is to grant the application, a summary of the application and the recommended decision shall be publicly noticed by the Office of the Engineer once via a legal notice in a local newspaper of general circulation and posted by the Office of the Engineer on the Board's website for a period not less than 45 days from the date the recommendation is issued. A summary of the application and the recommended decision shall also be distributed electronically to individuals or entities who have registered with the Board to receive electronic notice. If no objections are filed within 45 days of the initial Publication of the recommended decision by the Office of the Engineer, or if all filed objections are unconditionally withdrawn prior to being ruled upon, the application shall be granted by the Engineer or Designee within 10 days after expiration of the time for filing objections or after the unconditional withdrawal of the last objection, whichever date is later.

6. If the recommended decision is to deny the application, the applicant may withdraw the application within 10 days of the issuance of the recommended decision or appeal the recommended decision to the Engineer pursuant to Section 2-2-109 of this Ordinance. The application filing fee shall not be refunded upon withdrawal. Failure to withdraw the application or file an appeal within the applicable timeframes shall result in the application being deemed denied on the day after the expiration of the time to appeal.

7. If the recommended decision is to grant the application with conditions other than Mitigation, the application shall be noticed to the public and processed pursuant to the procedures set forth in Sections 2-2-107(5) and 2-2-110 of this Ordinance unless the applicant withdraws the application within 30 days of the issuance of the recommended decision or appeals the recommended decision to the Engineer pursuant to Section 2-2-109 of this Ordinance. The application filing fee shall not be refunded upon withdrawal.

8. Amendments to applications are not allowed after the issuance of a recommended decision on that application, except as provided in Section 2-2-108(2) of this Ordinance.

2-2-108. Process if Mitigation Required.

1. If Staff analysis of an application concludes that Mitigation is necessary to approve an application, a recommended decision shall be issued to that effect. Upon issuance of a recommended decision finding that Mitigation is required, the applicant may:

a. withdraw the application (with no refund of the application filing fee);

b. appeal the recommended decision to the Engineer pursuant to Section 2-2-109 of this Ordinance; or

c. prepare a Mitigation Plan.

2. If the applicant chooses to prepare a Mitigation Plan, the running of the time set forth in Section 2-2-107(2) of this Ordinance for processing that application is suspended until a timely Mitigation Plan is received from the applicant. The Mitigation Plan must be submitted within 180 days of issuance of the recommended decision requiring Mitigation, or of the decision of the Engineer or Designee as set forth in Section 2-2-109(10) of this Ordinance, whichever date is later, and must include either or both of:

a. an application for a Change in Use authorization for another water right so as to provide for the required Mitigation; and/or

b. amendments describing the source, volume, flow rate, point of diversion, place of use, period of use, and place of storage of mitigation water that comes from other than a change authorization.

3. The running of the time set forth in Section 2-2-107(2) of this Ordinance for analyzing the application and issuing a recommended decision resumes upon the timely receipt by the Office of the Engineer of the material(s) required by subsection (2) of this Section.

4. If a Mitigation Plan is timely submitted by an applicant following a decision of the Engineer or Designee as set forth in Section 2-2-109(10) of this Ordinance, Staff shall issue a new recommended decision concerning the application within 180 days of the timely submission of the Mitigation Plan.

5. If the recommended decision is to grant the application conditioned on the Mitigation Plan submitted by the applicant pursuant to subsection (2) of this Section, the application shall be noticed to the public and processed pursuant to the procedures set forth in Sections 2-2-107(5) and 2-2-110 of this Ordinance.

6. If the recommended decision is to deny the application, the applicant may withdraw the application within 10 days of the issuance of the recommended decision or appeal the recommended decision to the Engineer pursuant to Section 2-2-109 of this Ordinance. The application filing fee shall not be refunded upon withdrawal. Failure to withdraw the application or file an appeal within the applicable timeframes shall result in

the application being deemed denied on the day after the expiration of the time to appeal.

7. If the Mitigation Plan is not submitted within 180 days of issuance of the recommended decision requiring Mitigation the application shall be deemed denied.

2-2-109. Appeal to Engineer from Recommended Decision.

1. If a recommended decision issued pursuant to Sections 2-2-107 or 2-2-108 of this Ordinance is to deny an application, or grant it with a requirement of Mitigation or other conditions, the applicant may appeal to the Engineer by filing a notice of appeal within 30 days of issuance of the recommended decision. An applicant may elect to have the appeal decided on the record, after submission of additional evidence and argument, or after hearing. If the applicant elects to have a hearing, that request must be made at the same time as the filing of the notice of appeal or the right to a hearing is waived. The notice of appeal must specify those parts of the recommended decision claimed to be in error.

2. Within 60 days from the filing of the notice of appeal, or any extended period of time, not to exceed 60 days, granted by the Engineer or Designee, the applicant may submit additional factual evidence and legal argument in support of the application. Staff who issued the recommended decision shall have 45 days from the applicant's submission to revise, amend, or affirm the recommended decision in a second recommended decision that explains in writing the rationale for the second recommended decision.

3. If the recommended decision or second recommended decision is to deny an application and no notice of appeal is filed pursuant to this Section, the application shall be deemed denied the day after expiration of the time for filing a notice of appeal.

4. The applicant bears the burden of demonstrating to the Engineer or Designee by a preponderance of the evidence, whether a hearing is held or not, that the recommended decision or second recommended decision is in error.

5. If the applicant requests a hearing before the Engineer or Designee, a hearing shall be held no later than the latest of the following:

a. 90 days after the filing of the notice of appeal; or

b. 30 days after the issuance of a second recommended decision pursuant to subsection (2) of this Section, whichever is later.

6. The hearing shall be recorded electronically and an official record maintained. All evidence that, in the opinion of the Engineer or Designee, possesses probative value shall be admitted, including hearsay, if it is the

type of evidence commonly relied upon by reasonably prudent Persons in the conduct of their normal business affairs. Rules of privilege recognized by law shall be given effect. Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded.

7. A decision by the Engineer or Designee to reverse, modify, or affirm the recommended decision or the second recommended decision shall be made in writing within 60 days after the later of:

a. the filing of a notice of appeal pursuant to subsection (1) of this Section;

b. the submission of additional evidence or legal argument pursuant to subsection (2) of this Section;

c. issuance of Staff's second recommended decision; or

d. the completion of the hearing.

8. If the Engineer or Designee reverses the recommended decision or the second recommended decision, and determines that the application should be granted, the application shall be publicly noticed to the public and processed pursuant to the provisions of Section 2-2-107(5) and Section 2-2-110 of this Ordinance.

9. If the Engineer or Designee affirms the recommended decision or the second recommended decision, resulting in the denial of an application, the applicant may either accept that decision by withdrawing the application or taking no further action, or may appeal that decision to the Board pursuant to Section 2-2-111 of this Ordinance. The application filing fee shall not be refunded upon withdrawal. If no timely notice of appeal is filed, the application shall be deemed denied on the day after the expiration of the time to file the notice of appeal.

10. If the Engineer or Designee affirms the recommended decision or the second recommended decision, resulting in the granting of an application with a requirement of conditions other than Mitigation, the applicant may withdraw the application; file with the Office of the Engineer written acceptance of the conditions within 30 days of the Engineer's or Designee's decision, in which case the application will be noticed to the public and processed pursuant to the provisions of Sections 2-2-107(5) and 2-2-110 of this Ordinance; or appeal the decision to the Board pursuant to Section 2-2-111 of this Ordinance. The application filing fee shall not be refunded upon withdrawal. Failure to withdraw the application, file written acceptance of the condition, or file an appeal within the applicable timeframes shall result in the application being deemed denied on the day after the expiration of the time to appeal.

11. If an applicant has appealed to the Engineer a Staff determination that Mitigation is necessary pursuant to Section 2-2-108(1)(b) of this Ordinance, and the Engineer or Designee affirms the recommended decision resulting in a determination that Mitigation is required before the application may be granted, the

applicant may withdraw the application; appeal the decision to the Board pursuant to Section 2-2-111 of this Ordinance; or prepare a Mitigation Plan pursuant to Section 2-2-108(2) of this Ordinance. The application filing fee shall not be refunded upon withdrawal. Failure to withdraw the application, file a Mitigation Plan, or file an appeal within the applicable timeframes shall result in the application being deemed denied on the day after the expiration of the time to file a Mitigation Plan.

12. If the Engineer or Designee affirms a recommended decision or second recommended decision that found a Mitigation Plan inadequate to justify the issuance of the proposed Appropriation Right or Change in Use authorization, the applicant may either accept that decision by withdrawing the application or taking no further action, or may appeal that decision to the Board pursuant to Section 2-2-111 of this Ordinance. The application filing fee shall not be refunded upon withdrawal. If no timely notice of appeal is filed, the application shall be deemed denied on the day after the expiration of the time to file the notice of appeal.

13. Any applicant wishing to appeal a decision of the Engineer or Designee pursuant to this Section must file a notice of appeal with the Board. Any such notice of appeal must be filed with the Board within 30 days of the Engineer's or Designee's decision. To be filed, a notice must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing. Immediately upon receipt by the Board, the notice of appeal shall be date stamped.

2-2-110. Notice and Hearing on Recommended Decision to Grant.

1. Any Person alleging that they will suffer adverse effect from the grant of an application for proposed Appropriation Right or Change in Use authorization may file an objection to a recommended decision to grant an application. To be valid, an objection must describe the alleged adverse effect on the objector's water right.

2. An objector or an applicant may elect to have any valid objection decided on the record or after hearing. If the objector elects to have a hearing, that request must be made at the same time as the filing of the objection or the objector's right to a hearing is waived. The applicant must invoke the right to a hearing within 10 days of receiving notice of the objection or the applicant's right to a hearing is waived.

3. Discovery prior to hearing will be as provided by the Engineer or Designee, and may commence following the receipt of a valid objection.

4. If, prior to the hearing, valid objections are withdrawn pursuant to an agreement between or among the applicant and objector(s) setting forth various conditions on the application, the Engineer or Designee shall

grant the application subject to those conditions necessary to satisfy the criteria set forth in Section 2-2-102(1) of this Ordinance, but the Engineer or Designee has the discretion to accept or reject other conditions of the agreement between or among the applicant and objector(s).

5. The Engineer or Designee, after issuance of notice of hearing, may not communicate with any party to that case or any party's representative(s) in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate.

6. The hearing shall be recorded electronically and an official record maintained.

7. All evidence that, in the opinion of the Engineer or Designee, possesses probative value shall be admitted, including hearsay, if it is the type of evidence commonly relied upon by reasonably prudent Persons in the conduct of their normal business affairs. Rules of privilege recognized by law shall be given effect. Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded.

8. The burden of proof is on the applicant to prove the applicable criteria of Section 2-2-102(1) of this Ordinance by a preponderance of evidence.

9. A written decision by the Engineer or Designee shall be rendered within 60 days of the hearing, disseminated to the parties, and posted by the Office of the Engineer on the Board's website within 10 days of its issuance. If the individual who conducted the hearing becomes unavailable to the Office of the Engineer, a decision may be prepared by an individual who has read the record only if the demeanor of witnesses is considered immaterial by all parties to the case. If any party considers the demeanor of any witness to be material to the resolution of the appeal, a new hearing must be held.

10. Any applicant or objector dissatisfied with the final decision of the Engineer or Designee may appeal to the Board (and become an appellant) and obtain review of the Engineer's or Designee's decision. A notice of appeal to the Board must be filed with the Board within 30 days of the Engineer's or Designee's decision. To be filed, a notice must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing. Immediately upon receipt by the Board, the notice of appeal shall be date stamped.

2-2-111. Appeal to the Board.

1. Any question not raised before the Engineer or Designee may not be raised in the appeal to the Board unless it is shown to the satisfaction of the Board that there was good cause for failure to raise the question

before the Engineer or Designee.

2. Appeal to the Board of decisions of the Engineer or Designee shall be confined to the record. If, before the date set for hearing the appeal, application is made to the Board for leave to present additional evidence and it is shown to the satisfaction of the Board that the additional evidence is material and that there were good reasons for failing to present it in the proceeding before the Engineer or Designee, the Board may order that the additional evidence be taken before the Engineer or Designee upon conditions determined by the Board, including the deadline for submission of additional evidence to the Engineer or Designee and for the conclusion of the Engineer's or Designee's review of any such additional evidence. The Engineer or Designee may modify the findings and decision by reason of the additional evidence or may affirm the prior decision and shall file a modified decision or notice of affirming the decision with the Board pursuant to a reasonable deadline set by the Board.

3. If the appellant requests an oral argument, the Board must hold oral argument on the appeal. If the appellant does not request an oral argument, the Board may, in its discretion, order oral argument or may resolve the appeal without one.

4. Review by the Board:

a. the review by the Board must be confined to the record. In cases of alleged irregularities in procedure before the Engineer or Designee not shown in the record, proof of the irregularities may be taken by the Board. The Board, upon request, shall hear oral argument and receive written briefs.

b. the Board may not substitute its judgment for that of the Engineer or Designee as to the weight of the evidence on questions of fact.

c. the Board may affirm the decision of the Engineer or Designee or remand the case for further proceedings.

d. the Board may reverse or modify the decision if substantial rights of an appellant have been prejudiced because:

i. the Engineer's or Designee's findings, inferences, conclusions, or decisions are:

(1) in violation of constitutional or statutory provisions;

(2) in excess of the authority of the Engineer or Designee;

(3) made upon unlawful procedure;

(4) affected by other error of law;

(5) clearly erroneous in view of the record as a whole;

(6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

ii. findings of fact, upon issues essential to the decision, were not made although requested.

2-2-112. Appeal to Court of Competent Jurisdiction. Pursuant to Article IV.I.6 of the Compact, an aggrieved party may obtain review of a final decision of the Board by filing a petition for judicial review with a Court of Competent Jurisdiction within 30 days of the issuance of the final Board decision. In considering the petition, the Board's legal conclusions shall be reviewed for correctness and its factual findings for abuse of discretion. In the event that a court determines that it lacks subject matter or personal jurisdiction to rule on a petition for judicial review of a Board decision, the party filing the petition shall be entitled to petition for judicial review from any other Court of Competent Jurisdiction within thirty days from the date of a final court order finding lack of jurisdiction.

2-2-113. Completion.

1. Whenever an Appropriation Right or Change in Use authorization is issued under this Chapter, the Engineer or Designee shall specify in writing as part of the Appropriation Right or Change in Use authorization issued, or in any authorized extension of time provided pursuant to subsection (2) of this Section, the time limits for commencement of the appropriation Works, completion of construction, and actual application of water to the proposed beneficial use. In fixing those time limits, the Engineer or Designee shall consider the cost and magnitude of the project, the engineering and physical features to be encountered, and, on projects designed for gradual development and gradually increased use of water, the time reasonably necessary for that gradual development and increased use. The Engineer or Designee shall issue the Appropriation Right or Change in Use authorization, or the authorized extension of time, subject to the terms, conditions, restrictions and limitations the Engineer or Designee considers necessary to ensure that work on the Appropriation is commenced, conducted, and completed and that the water is actually applied in a timely manner to the beneficial use specified in the Appropriation Right or Change in Use authorization.

2. The Engineer or Designee, for good cause shown, may extend the time limits specified in the Appropriation Right or Change in Use authorization for commencement of the appropriation Works, completion of construction, and actual application of water to the proposed beneficial use. If commencement of the appropriation Works, completion of construction, or actual application of water to the proposed beneficial use is

not completed within the time limit set forth in the Appropriation Right or Change in Use authorization, or by any extension granted pursuant to this subsection, the Appropriation Right or Change in Use authorization is void upon lapse of the time limit.

3. Any owner of an Appropriation Right or Change in Use authorization who disagrees with the time limit specified by the Engineer or Designee pursuant to subsections (1) and (2) of this Section may appeal the Engineer's decision to the Board pursuant to Section 2-2-111 of this Ordinance. A notice of appeal must be filed with the Board within 30 days of the Engineer's or Designee's decision. To be filed, a notice must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing.

2-2-114. Compliance with Completion Deadline. Upon actual application of water to the proposed beneficial use within the time allowed by the Engineer or Designee pursuant to Section 2-2-113 of this Ordinance, the owner of the Appropriation Right or Change in Use authorization shall notify the Office of the Engineer that the Appropriation has been completed. The notification must contain a certified statement by an individual with experience in the design, construction, or operation of appropriation Works describing how the Appropriation was completed. The Office of the Engineer shall review the certified statement and may then inspect the Appropriation, and if it determines that the Appropriation has been completed in substantial accordance with the Appropriation Right or Change in Use authorization, it shall issue the owner of the Appropriation Right or Change in Use authorization a Flathead Reservation Appropriation Right Document. The original of the document shall be sent to the owner of the Appropriation Right or Change in Use authorization, and a duplicate shall be kept in the Office of the Engineer.

2-2-115 Redundant and Substitute Wells.

1. An Appropriator may change an Appropriation Right or Existing Use without first applying for a Change in Use authorization pursuant to Sections 2-2-101 et seq. of this Ordinance for the purpose of constructing a Substitute Well if:

a. the rate and volume of the appropriation from the Substitute Well are equal to or less than that of the Well being replaced;

b. the water from the Substitute Well is appropriated from the same Groundwater source as the water appropriated from the Well being replaced; and

c. a timely, correct and complete Notice of Substitute Well is submitted to the Engineer as provided in

subsection 2 of this Section.

2. Review.

a. Within 60 days after a Substitute Well is completed and delivering water, the Appropriator shall file a Notice of Substitute Well with the Office of the Engineer on a form provided by the Board. Upon receipt of the Notice, the Office of the Engineer shall date stamp it.

b. The Engineer or Designee shall review the Notice of Substitute Well within 90 days of the date stamped on it pursuant to subsection (2)(a) of this Section, and shall issue a Change in Use authorization if all of the criteria identified in subsection (1) of this Section have been met and the Notice of Substitute Well is correct and complete.

c. The Engineer or Designee may not issue a Change in Use authorization until a correct and complete Notice of Substitute Well has been filed with the Office of the Engineer. The Office of the Engineer shall return to the Appropriator a Notice that is determined by Staff to be defective, along with a description of defects in the Notice. The Appropriator shall refile a corrected and completed Notice of Substitute Well within 30 days of notification of defects or within a further time as the Engineer or Designee may allow, not to exceed 180 days. If the Appropriator does not refile within that timeframe, the Appropriation Right will be deemed denied and the Appropriator must then comply with the provisions of subsection (d) of this Section.

d. If a Notice of Substitute Well is not completed within the time allowed, the Appropriator shall:

i. cease appropriation of water from the Substitute Well pending approval by the Engineer or Designee; and

ii. submit an application for a Change in Use authorization pursuant to Section 2-2-104 of this Ordinance; or

iii. comply with the well abandonment procedures, standards and rules adopted by the board of water well contractors pursuant to 37-43-202, MCA, or any successor procedures, standards and rules that are promulgated in State law.

3. Wells that have been determined to be abandoned pursuant to Sections 2-1-111 and 2-1-112 of this Ordinance are not eligible to be replaced by Substitute Wells under this Section.

4. For each well that is replaced under subsection (1) of this Section, the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202, MCA, or any successor procedures, standards and rules that are promulgated in State law.

5. An Appropriator may change an Appropriation Right or Existing Use without first applying for a Change in Use authorization pursuant to Section 2-2-101, et seq. of this Ordinance for the purpose of constructing a Redundant Well in a Public Water Supply System if the Redundant Well:

a. withdraws water from the same Groundwater source as the original well; and

b. is required by a State, federal, or Tribal agency.

6. The priority date of the Redundant Well is the same as the priority date of the original well. Only one well may be used at one time.

7. Within 60 days of completion of a Redundant Well, the Appropriator shall file a Notice of Construction of Redundant Well with the Office of the Engineer on a form provided by the Board. The Engineer or Designee shall review and process the Notice pursuant to the procedures set forth in subsection (2) of this Section.

8. If a Notice of Construction of Redundant Well is not completed within the time allowed, the Appropriator shall:

a. cease appropriation of water from the Redundant Well pending approval by the Engineer or Designee; and

b. submit an application for a Change in Use authorization pursuant to Section 2-2-104 of this Ordinance; or

c. comply with the well abandonment procedures, standards and rules adopted by the board of water well contractors pursuant to 37-43-202, MCA, or any successor procedures, standards and rules that are promulgated in State law.

9. Any Appropriator aggrieved by a determination that a corrected Notice required by subsection (2) or (7) of this Section, as applicable, is defective may appeal that determination to the Board by filing a notice of appeal to the Board within 30 days of the rejection of the corrected Notice. To be filed, a notice must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing.

10. Any appeal to the Board filed pursuant to subsection (9) of this Section shall be conducted pursuant to the provisions of Section 3-1-104 of this Ordinance. If such an appeal is filed, the Engineer shall be the appellee.

2-2-116. Appropriation Rights for Stock Water Allowances.

1. Appropriation Rights for Stock Water Allowances include Stock Water Well Allowances, Stock Water

Pit Allowances, and Stock Water Tank Served by Surface Water Allowances.

2. A Stock Water Well Allowance may be sourced from either Wells or Developed Springs.

3. A Stock Water Pit Allowance may be sourced from Groundwater seepage or a non-perennial stream.

4. A Stock Water Tank Served by Surface Water Allowance may be sourced from a perennial or non-perennial stream.

5. Before appropriating water for a Stock Water Well, approval from the Engineer is required. The Engineer may approve a Stock Water Well Allowance if:

a. the Well construction complies with the requirements of Section 1-1-111 of this Ordinance;

b. the maximum flow rate is 35 gallons per minute or less;

c. the maximum annual diverted volume is 2.4 acre-feet or less;

d. the means of diversion is a single Well or Developed Spring;

e. the well is not physically connected to a Home or Business;

f. the means of diversion includes Well Shaft Casing; and

g. Stock Water use associated with the Appropriation is dispensed using Stock Tanks.

6. Before appropriating water for a Stock Water Pit Allowance, approval from the Engineer is required. The Engineer can approve a Stock Water Pit allowance if:

a. the capacity of the Stock Water Pit is 5 acre feet or less;

b. the maximum annual appropriated volume is 10 acre feet or less;

c. the Stock Water Pit Allowance is sourced from Groundwater seepage, a non-perennial stream, or both, provided that a ditch or pipeline is not used;

d. the Stock Water Pit Allowance is constructed on and accessible to a parcel of land 40 acres or larger and owned or under control of the applicant; and

e. the construction of the means of diversion complies with Tribal Ordinance 87(A) (Aquatic Lands Conservation Ordinance).

7. Before appropriating water for a Stock Water Tank Served by Surface Water Allowance, approval from the Engineer is required. The Engineer can approve a Stock Water Tank Served by Surface Water Allowance if:

a. the maximum flow rate is 10 gallons per minute or less;

b. the combined maximum annual diverted volume is 2.4 acre-feet or less;

c. the means of conveyance is a fully contained pipe or hose. Open ditch conveyance is not allowed;

d. the construction of the means of diversion complies with Tribal Ordinance 87(A) (Aquatic Lands Conservation Ordinance); and

e. Stock Water associated with the appropriation is dispensed using one or more Stock Tanks.

8. An applicant must file a completed Application for a Stock Water Allowance with the Office of the Engineer and obtain approval from the Engineer before developing and appropriating water for Stock Water use pursuant to this Section. A complete application shall also include:

a. proof that the applicant has the possessory interest or the written consent of the Person(s) with possessory interest in the property where the point of diversion is located and where the water is to be put to beneficial use, and property rights in the diversion Works; and

b. a site-map that shows, in addition to the requirements of Section 1-1-110(12) of this Ordinance, the location of all proposed Stock Water Allowance development(s) including latitude and longitude in decimal degrees. The map must include the entire property boundaries where the Stock Water Allowance development is proposed, or a minimum radius of 500 feet from any proposed Stock Water Allowance development, whichever is greater, and include any of the following that are in existence or are proposed by the applicant:

i. well(s), Pits and Stock Tanks including purpose of each;

ii. buildings on the site, including identification of Well connections;

iii. property lines and ownerships; and

iv. means of conveyance, water right points of diversions, and surface water features.

9. Upon receipt of a completed application form complying with subsection (8) of this Section, the Office of the Engineer shall date stamp the application form.

10. The Engineer or Designee shall review the application within 30 days of the date stamped on the application pursuant to subsection (9) of this Section, and within that timeframe may either approve the application or return a defective application to the applicant with a written explanation of the defects. If a corrected application is submitted within 30 days of its return by the Office of the Engineer, no new filing fee shall be required. Upon receiving a corrected application, which shall be date stamped by the Office of the Engineer upon receipt, the Engineer or Designee has 30 days from the date stamped on the corrected application pursuant to this subsection (10) to approve or deny the application.

11. If the Engineer or Designee does not approve or return an application within 30 days of the date

stamped on the application pursuant to subsection (9) of this Section, the application shall be deemed approved. If the Engineer or Designee does not approve or deny a corrected application within 30 days of the date stamped on the application pursuant to subsection (10) of this Section, the application shall be deemed approved.

12. Once an applicant meets the requirements of subsections (5) through (9) of this Section, as applicable, and an application is approved by the Engineer or Designee under subsection (10) or (11) of this Section, the Office of the Engineer shall issue an authorization to develop a Stock Water Allowance. The authorization to develop a Stock Water Allowance entitles an Appropriator to construct the authorized type of Stock Water Allowance within, but not to exceed, one year of the date of approval.

13. An Appropriation Right for a Stock Water Allowance becomes valid and final when, within 120 days of completing the diversion Works and putting the water to beneficial use, an Appropriator files a Stock Water Allowance completion form accurately and completely. The completion form for a Stock Water Well Allowance must include a copy of the companion Well Log Report(s), and must identify the as-built attributes of any Well, Pit or Stock Tank constructed. If the as-built attributes are less than or equal to the size of the Allowance for which the applicant originally applied, a Certificate of Stock Water Allowance shall be issued for the as-built attributes. No Certificate of Stock Water Allowance may be issued if the as-built system exceeds the volumes or flow rates set forth in subsections (5), (6) or (7) of this Section, as applicable.

14. If an Appropriation Right for a Stock Water Allowance is revoked by the Board pursuant to the provisions of Section 3-1-112(3) of this Ordinance, or is determined to be abandoned pursuant to the provisions of Sections 2-1-111 and 2-1-112 of this Ordinance, or is voluntarily abandoned, the Appropriator shall, within 180 days of the revocation or voluntary abandonment, fill in and rehabilitate any Pits, Pit-dams, Constructed Ponds, or Reservoirs associated with the revoked or abandoned Appropriation Right for a Stock Water Allowance, and shall, within 180 days of the revocation or voluntary abandonment, seal any tanks or supply lines associated with the revoked or abandoned Appropriation Right for a Stock Water Allowance.

2-2-117. Appropriation Rights for Domestic Allowances for Homes and Businesses; process for application, review, and issuance.

1. Appropriation Rights for Domestic Allowances include Individual Domestic Allowances, Shared Domestic Allowances and Development Domestic Allowances. An Individual Domestic Allowance may be used only to serve an individual Home or Business. A Shared Domestic Allowance may be used only to serve no less than two and no more than three Homes and/or Businesses. A Development Domestic Allowance may be used

only to serve a Development.

2. A Domestic Allowance may be sourced from either Wells or Developed Springs.

3. A Domestic Allowance may not be used to fill or maintain Pits, Pit-Dams, Constructed Ponds, or Reservoirs.

4. Before appropriating water for Domestic Use for an Individual Domestic Allowance, approval from the Engineer is required. The Engineer may approve an Individual Domestic Allowance if:

a. the Well construction complies with the requirements of Section 1-1-111 of this Ordinance;

b. the maximum flow rate is 35 gallons per minute or less;

c. the maximum annual diverted volume is 2.4 acre-feet or less;

d. the means of diversion is a single Well or Developed Spring;

e. the Well is physically connected to and serves one and only one Home or Business;

f. the means of diversion includes Well Shaft Casing;

g. Stock Water use associated with the allowance is dispensed using Stock Tanks; and

h. the amount of land to be irrigated by the allowance is 0.7 acres or less.

5. Before appropriating water for a Shared Domestic Allowance, approval from the Engineer is required. The Engineer may approve a Shared Domestic Allowance if:

a. the Well construction complies with the requirements of Section 1-1-111 of this Ordinance;

b. the maximum flow rate is 35 gallons per minute or less;

c. the maximum annual diverted volume is 2.4 acre-feet or less;

d. the means of diversion is a single Well or Developed Spring;

e. the Well is physically connected to not less than two and not more than three Homes and/or Businesses that are not a Development;

f. the means of diversion includes Well Shaft Casing;

g. Stock Water use associated with the allowance is dispensed using Stock Tanks;

h. if the Well is connected to two homes and/or businesses, the amount of land to be irrigated with the allowances is 0.5 acres or less. If the well is connected to three Homes and/or Businesses, the amount of land to be irrigated by the allowance is 0.75 acres or less; and

i. the application includes a copy of the Shared Well Agreement signed by all parties.

6. Before appropriating water for a Development Domestic Allowance, approval from the Engineer is

required. The Engineer may approve a Development Domestic Allowance if:

a. the Well construction complies with the requirements of Section 1-1-111 of this Ordinance;

b. the maximum flow rate from each Well or Developed Spring is 35 gallons per minute or less;

c. the combined maximum annual diverted volume from all wells and Developed Springs is 10 acre-feet or less;

d. Measurement devices approved by the Engineer and capable of recording cumulative volumes are installed on each Well or Developed Spring;

e. the means of diversion is one or more Wells and/or Developed Springs not to exceed one Well or Developed Spring per Home or Business within the Development;

f. the means of diversion includes Well Shaft Casing;

g. the allowance is physically connected to multiple Homes and/or Businesses that together constitute a Development;

h. Stock Water use associated with the allowance is dispensed using Stock Tanks;

i. the amount of land to be irrigated with the allowances is limited to 0.25 acres or less for each Home or Business within the Development;

j. the application includes a copy of any Shared Well Agreement(s) signed by all parties, if applicable;

k. the water supply requirements for all Homes and Businesses within the Development are satisfied by the allowance; and

l. the applicant includes a copy of the development plan, plat, or equivalent as required by the associated county government.

7. The owner(s) or operator(s) of a Development Domestic Allowance must submit a Development Domestic Allowance Water Measurement Report by March 31st of the year following the year covered by the report.

8. An applicant must file a completed Application for a Domestic Allowance and obtain approval from the Engineer before drilling any Well(s) or developing any spring(s) and putting water to use pursuant to this Section. A completed application shall also include:

a. proof that the applicant has a possessory interest or the written consent of the Person(s) with possessory interest in the property where the point of diversion is located and where the water is to be put to beneficial use, and property rights in the diversion Works; and

b. a site-map that shows, in addition to the requirements of Section 1-1-110(12) of this Ordinance, the location of all proposed Wells and Developed Springs including latitude and longitude in decimal degrees. The map must include the entire property boundaries where the Well associated with the Domestic Allowance is proposed, or a minimum of 500 feet in radius around the proposed Well(s) or Developed Spring(s), whichever is greater, and include any existing or proposed by the applicant:

i. Well(s) and Stock Tanks, including purpose of each well;

ii. sewage facilities including septic tanks and drainfields;

iii. buildings on the site, including identification of Well connections;

iv. property lines and ownerships;

v. irrigated acres per lot or unit Well(s); and

vi. means of conveyance, water right points of diversions, and surface water features.

9. Upon receipt of a completed application form complying with subsection (8) of this Section, the Office of the Engineer shall date stamp the application form.

10. The Engineer or Designee shall review the application within 30 days of the date stamped on the application pursuant to subsection (9) of this Section, and within that timeframe may either approve the application or return a defective application to the applicant, together with a written explanation of the defects. If a corrected application is submitted within 30 days of its return by the Office of the Engineer, no new filing fee shall be required. Upon receiving a corrected application, which shall be date stamped by the Office of the Engineer upon receipt, the Engineer or Designee has 30 days from the date stamped on the corrected application pursuant to this subsection (10) to approve or deny the application.

11. If the Engineer or Designee does not approve or return an application within 30 days of the date stamped on the application pursuant to subsection (9) of this Section, the application shall be deemed approved. If the Engineer or Designee does not approve or deny a corrected application within 30 days of the date stamped on it pursuant to subsection (10) of this Section, the application shall be deemed approved.

12. Once an applicant meets the requirements of subsections (4), (5), or (6) of this Section, as applicable, as well as the requirements of subsection (8) of this Section, and an application is approved by the Engineer or Designee under subsection (10) or (11) of this Section, the Office of the Engineer shall issue an authorization to develop a Domestic Allowance. The authorization to develop a Domestic Allowance entitles an Appropriator to construct the authorized type of Domestic Allowance within, but not to exceed, one year of the date of approval.

13. An Appropriation Right for a Domestic Allowance becomes valid and final when, within 120 days of completing the Well(s) or Developed Spring(s) and putting the water to beneficial use, an Appropriator files a Domestic Allowance completion form accurately and completely. The completion form must also include a copy of the companion Well Log Report(s), and must identify the as-build attributes of any Well or Stock Tank constructed. If the as-built attributes are less than or equal to the size of the allowance for which the applicant originally applied, a Certificate of Domestic Allowance shall be issued for the as-built attributes. No Certificate of Domestic Allowance may be issued if the as-built system exceeds the volumes or flow rates set forth in subsections (4), (5) or (6) of this Section, as applicable.

14. If an Appropriation Right for a Domestic Allowance is revoked by the Board pursuant to the provisions of Section 3-1-112(3) of this Ordinance, or is determined to be abandoned pursuant to the provisions of Sections 2-1-111 and 2-1-112 of this Ordinance, or is voluntarily abandoned, the Appropriator shall, within 180 days of the revocation or voluntary abandonment, follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202, MCA, or any successor procedures, standards and rules that are promulgated in State law, for any Well associated with the revoked or abandoned Appropriation Right for a Domestic Allowance.

2-2-118. Process for development of new uses from Flathead System Compact Water.

1. Subject to the terms and conditions of the Compact, the Tribal Council or its delegate, or any Person with the written consent of the Tribal Council or its delegate, may apply to utilize Flathead System Compact Water for any beneficial use within the Reservation by submitting a correct and complete application to the Office of the Engineer.

2. A correct and complete application for a use of Flathead System Compact Water shall contain the following information:

a. the name of the applicant;

b. a description of the proposed purpose of use;

c. the point of diversion

d. the means of diversion

e. the place of use;

f. the flow rate, volume diverted, and volume consumed;

g. the means of conveyance;

h. the period of use;

i. the duration or term of the proposed use;

j. a project plan, including a proposed completion period and, if applicable, a list of water rights to be used in conjunction with or to be replaced by the proposed use of Flathead System Compact Water for which the application is being filed;

k. a map depicting all the features described in this subsection (2); and

l. if the applicant is not the Tribal Council or its delegate, written authorization from the Tribal Council or its delegate to submit the application.

3. Upon receipt of a completed application for the use of Flathead System Compact Water, the Office of the Engineer shall date stamp it.

4. Staff shall analyze the application for the use of Flathead System Compact Water within 180 days of the date stamped on the application pursuant to subsection (3) of this Section using the tools and techniques identified in Section 2-2-107(2) of this Ordinance to determine compliance with the criteria identified in Section 2-2-102(2)(b) through (f) of this Ordinance.

5. All information relied upon by Staff in analyzing an application pursuant to this Section shall be documented in the application file.

6. Staff, using information from the application as well as their own compilation of independent resources and analysis, shall draft a recommended decision with findings of fact and conclusions of law determining whether the application satisfies the criteria set forth in Section 2-2-102(2)(b) through (f) of this Ordinance.

7. If the recommended decision is to grant the application, a summary of the application and the recommended decision shall be publicly noticed by the Office of the Engineer once via legal notice in a newspaper of general circulation on the Reservation and shall be posted on the Board's website for a period of 45 days from the date the recommended decision is issued, during which time objections may be filed with the Engineer. If no objections are filed, or if all filed objections are withdrawn prior to being ruled upon, the application shall be granted by the Engineer within 10 days after expiration of the time for filing objections, or after the unconditional withdrawal of the last objection, whichever date is later.

8. If the recommended decision is to deny the application, the applicant may appeal the recommended decision to the Engineer pursuant to the provisions of Section 2-2-109 of this Ordinance.

9. If the recommended decision is to grant the application with conditions, the application shall be noticed

to the public pursuant to the provisions of subsection (7) of this Section unless the applicant withdraws the application within 30 days of the issuance of the recommended decision or appeals the recommended decision to the Engineer pursuant to the provisions of Section 2-2-109 of this Ordinance. The application filing fee shall not be refunded upon withdrawal.

10. To be valid for processing, an objection to an application for the use of Flathead System Compact Water must assert and describe how the proposed development of Flathead System Compact Water fails to comply with one or more of the criteria set forth in Section 2-2-102(2)(b) through (f) of this Ordinance. Any such valid objection shall be resolved pursuant to the procedures set forth in Sections 2-2-110 through 2-2-112 of this Ordinance, provided however, that the burden of proof in the hearing before the Engineer or Designee shall be on the objector to prove by a preponderance of the evidence that the application fails to comply with one or more of the criteria set forth in Section 2-2-102(2)(b) through (f) of this Ordinance.

11. Unless an objection to the application is sustained, the application shall be granted within 10 days of expiration of the time to appeal the decision relating to any objection or after the exhaustion of the objector's last appeal, whichever date is later.

12. The priority date of any use of Flathead System Compact Water is the date of the Tribes' Flathead System Compact Water right as set forth in Article III.C.1.c of the Compact.

2-2-119. Appropriation Rights for Non-consumptive Geothermal Heating or Cooling Exchange Wells.

1. Appropriation Rights may be issued for non-consumptive geothermal heating or cooling exchange Wells with a maximum appropriation of 350 gallons a minute or less if all of the water extracted is returned without delay to the same source aquifer, if the distance between the extraction well and both the nearest existing well and any hydraulically connected surface waters is more than twice the distance between the extraction well and the Injection Well, and if all Well construction complies with the requirements of Section 1-1-111 of this Ordinance. Before appropriating water for a use described in this subsection (1), approval of the Engineer is required.

2. An applicant must file a completed application form and obtain approval from the Engineer before drilling any Well(s) or developing any spring(s) and putting water to use pursuant to this Section. A completed application shall also include:

a. proof that the applicant has the possessory interest or the written consent of the Person(s) with possessory interest in the property where the point of diversion is located and where the water is to be put to

beneficial use, and property rights in the diversion Works; and

b. a site-map showing the location of all proposed wells including latitude and longitude in decimal degrees. The map must also include the entire property boundaries where the Wells are proposed, or a minimum of 500 feet in radius around the proposed Well(s) or spring(s), whichever is greater, and include any of the following that exist or are proposed by the applicant:

i. well(s) including purpose of each well;

ii. sewage facilities including septic tanks and drainfields;

iii. buildings on the site, including identification of Well connections;

iv. property lines and ownerships;

v. irrigated acres per lot or unit well(s); and

vi. means of conveyance, water right points of diversions, and surface water features.

3. Upon receipt of a completed application form complying with subsection (2) of this Section, the Office of the Engineer shall date stamp the application form.

4. The Engineer or Designee shall review the application within 45 days of the date stamped on the application pursuant to subsection (3) of this Section, and within that timeframe may either approve the application or return a defective application to the applicant, together with a written explanation of the defects. If a corrected application is submitted within 30 days of its return by the Office of the Engineer, no new filing fee shall be required. Upon receiving a corrected application, which shall be date stamped by the Office of the Engineer upon receipt, the Engineer or Designee has 30 days from the date stamped on the corrected application pursuant to this subsection (4) to approve or deny the application.

5. If the Engineer or Designee does not approve or return an application within 45 days of the date stamped on the application pursuant to subsection (3) of this Section, the application shall be deemed approved. If the Engineer or Designee does not approve or deny a corrected application within 30 days of the date stamped on this application pursuant to subsection (4) of this Section, the application shall be deemed approved.

6. Once an applicant meets the requirements of subsection (1) of this Section and the application is approved pursuant to subsection (4) or (5) of this Section, as applicable, the Engineer shall issue an authorization to develop the Appropriation Right for a Heating/Cooling Exchange Well.

7. An Appropriation Right for a Heating/Cooling Exchange Well becomes valid and final when, within 120 days of completing the Well(s) or Developed Spring(s) and putting the water to beneficial use, an Appropriator

files a Heating/Cooling Exchange completion form accurately and completely. The completion form must also include a copy of the companion Well Log Report(s) for the extraction Well and the Injection Well.

8. If an Appropriation Right for a Heating/Cooling Exchange Well is revoked by the Board pursuant to the provisions of Section 3-1-112(3) of this Ordinance, or is determined to be abandoned pursuant to the provisions of Sections 2-1-111 and 2-1-112 of this Ordinance, or is voluntarily abandoned, the Appropriator shall, within 180 days of the revocation or voluntary abandonment, follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202, MCA, or any successor procedures, standards and rules that are promulgated in State law, for any Well associated with the revoked or abandoned Appropriation Right for a Heating/Cooling Exchange Well.

2-2-120. Temporary Emergency Appropriations.

1. A Temporary Emergency Appropriation may be made without prior approval from the Board, but the use must cease immediately when the water is no longer required to meet the emergency.

2. A Temporary Emergency Appropriation does not include the use of water for the ordinary operation and maintenance of any trade or business, including but not limited to agricultural production.

3. Within 60 days after the cessation of a Temporary Emergency Appropriation, the Appropriator shall notify the Board of the use to which the water was put, the dates of use, and the estimated amount of water used.

4. Except as set forth in subsection (5) of this Section, a Temporary Emergency Appropriation may not include the use of Enclosed Storage.

5. When the Temporary Emergency Appropriation is made by a local governmental fire agency organized under Title 7, chapter 33, MCA, or applicable Tribal law, and the Temporary Emergency Appropriation is used only for emergency fire protection, the Temporary Emergency Appropriation may include enclosed storage.

2-2-121. Short-term use of a portion of the Tribal Water Right for road construction or dust abatement. The Tribes, or a Person with the written consent of the Tribes, may use a portion of the Tribal Water Right for road construction or dust abatement purposes, without the prior approval of the Board, subject to the following provisions:

1. For uses of 20,000 gallons or less per day from a single source of supply, no notice is required;

2. For uses greater than 20,000 gallons per day and less than 60,000 gallons per day from a single source of supply, a notice must be posted at the site of the diversion or withdrawal for the entire period during which water is being diverted or withdrawn. The notice posted shall be clearly legible and visible and provide the

following information:

a. source of water;

b. purpose of use;

c. starting and ending date of diversion;

d. place of use;

e. diversion flow rate;

f. maximum volume of water to be diverted or withdrawn per day; and

g. name and contact information for the user of the water and for the Board.

3. For uses greater than 60,000 gallons per day from a single source of supply, the Board must be notified at least 10 days but not more than 45 days in advance of the initial use of the water. Notice must be posted at the site of the diversion or withdrawal, as provided in subsection (2) of this Section. Notification to the Board must provide the following information:

a. source of water;

b. legal description of the point of diversion or withdrawal;

c. place of use;

d. map showing preceding three items;

e. purpose of use;

f. starting and ending date of use;

g. diversion flow rate;

h. maximum volume of water to be diverted or withdrawn per day; and

i. name and contact information for the user.

4. The diversion or withdrawal of water pursuant to this Section shall not adversely affect any legal use of water in existence as of the date of the diversion or withdrawal; and

5. If notified that the diversion or withdrawal of water pursuant to this Section is adversely affecting any legal use of water in existence as of the date of the diversion or withdrawal, the user will immediately cease diversion or withdrawal from that source of supply. To resume the diversion or withdrawal, the user may move the diversion or withdrawal to another source of supply, or may satisfy the Board and the holder(s) of the affected legal use(s) of water in existence as of the date of the diversion or withdrawal that use will not cause adverse effects.

2-2-122. Short-term use of an appropriation right that is not part of the Tribal Water Right for road construction or dust abatement.

1. An Appropriator may lease, for a term not to exceed 90 days, all or part of an Appropriation Right or Existing Use that is not part of the Tribal Water Right for road construction or dust abatement without the prior approval of the Board, subject to the requirements of this Section. The lease agreement must include the following information:

a. the name and address of the lessee;

b. the name of the owner of the Appropriation Right or Existing Use;

c. the number of the Appropriation Right or Existing Use;

d. the purpose of use of water for which the lease is being made;

e. the source of water to be appropriated;

f. the starting and ending date of the proposed use of water;

g. the proposed point of diversion;

h. the proposed place of use;

i. the diversion flow rate and volume of water to be used during the period of use; and

j. a description of how the prior use of water will be reduced to accommodate the temporary change of use of the Appropriation Right or Existing Use, including the number and location of acres to be removed from irrigation, if applicable.

2. A short-term lease of an Appropriation Right or Existing Use under this Section may not exceed 60,000 gallons a day or the amount of the Appropriation Right or Existing Use, whichever is less. Any combination of short-term leases cannot exceed 120,000 gallons a day for one project.

3. Except as provided in subsection (7) of this Section, the following information must be submitted to the Board at least 2 days prior to the use of water by a lessee under this Section:

a. a copy of the Publication notice or copies of the individual notice required under subsection (4) of this Section;

b. a copy of the lease agreement; and

c. for a combination of short-term leases greater than 60,000 gallons a day for one project, an analysis by the lessee of any potential adverse effects and a description of planned actions to mitigate any potential adverse effects to Appropriators in the area of the proposed point of diversion.

4. Except as provided in subsection (7) of this Section, the lessee of an Appropriation Right or Existing Use under this section shall, 30 days prior to the use of the water, publish a notice of the proposed use of water once in a newspaper of general circulation in the area of the diversion or mail individual notice to potentially affected Appropriators in the area of the proposed point of diversion. The published notice or the individual notice must contain the information listed in subsections (1)(a) through (1)(j) and (3)(c) of this Section.

5. Complaints regarding temporary use

a. an Appropriator, whether the water right is prior or subsequent in priority to the short-term lease acquired by a Person under this Section, who cannot satisfy in full the Appropriator's right during the time that the short-term lessee is diverting water, may make a complaint to the Engineer pursuant to Section 3-1-102 of this Ordinance and cause the short-term lessee's diversion to be discontinued.

b. the diversion is discontinued until the complaining Appropriator's water right is satisfied or until the lessee establishes to the Engineer that the discontinuance has had no effect on the complaining Appropriator's water right. Upon establishment that discontinuance has not had an effect, the Engineer shall enter an order allowing the diversion to continue.

6. This Section does not limit the remedies available to an Appropriator to enjoin or to seek damages from a Person appropriating water under this Section.

7. a. a consolidated city-county or a county or an incorporated city or town is not subject to the requirements of subsections (3)(a) and (4) of this Section when conducting dust abatement that was not scheduled or contracted for 30 days or more prior to the use of the water.

b. a consolidated city-county or a county or an incorporated city or town that does not publish notice as provided in subsection (4) of this Section shall post a copy of the lease agreement at the point of diversion at least 24 hours prior to and during the time that water is diverted.

2-2-123. Wetland Protective Appropriation Rights.

1. Pursuant to the provisions of Sections 2-2-101 et seq. of this Ordinance, a Wetland Protective Appropriation Right for a Natural Wetland or Restored Natural Wetland may be issued, subject to the following limitations:

a. except as authorized by Appropriation Rights issued pursuant to Section 1-1-107(1)(k) of this Ordinance, irrigation return flows may not be used as a source for an Appropriation Right issued pursuant to this Section.

b. No Wetland Protective Appropriation Right shall be issued for any Wetland using Pits, Pit-dams, or Constructed Ponds.

c. No Wetland Protective Appropriation Right shall be issued for any Wetland occurring solely as a result of seepage from irrigation reservoirs, canals, laterals or ditches.

d. No Wetland Protective Appropriation Right shall be used for any other purpose and shall not be changed to another purpose.

2. Wetlands eligible for Wetlands Protective Appropriation Rights are:

a. Those Wetlands identified on the map of Wetlands eligible for Wetlands Protective Appropriations Rights (available from the Office of the Engineer); or

b. Those Wetlands not identified on the Map if:

i. the proposed use is a Restored Natural Wetland;

ii. the applicant provides a site-specific Wetlands delineation, using any delineation method approved by the Engineer, that includes:

(1) the total number of acres and a detailed map showing the proposed boundary of the Wetland for which the Wetland Protective Appropriation Right is being applied; and

(2) an identification of the Wetlands delineation method used, along with supporting field data.

2-2-124. Wetland Quantified Appropriation Rights.

1. Pursuant to the provisions of Sections 2-2-101 et seq. of this Ordinance, an Appropriations Right or Change in Use authorization to divert, impound, or withdraw surface water or Groundwater for a Wetland purpose may be issued.

2. All Wetlands that utilize man-made diversions, impoundments, withdrawals, excavations, or other artificial means for the purposes of Appropriation for either all or a portion of a Wetland water supply in excess of a Natural Wetland water supply or Restored Natural Wetland water supply shall obtain, in advance of Appropriation, an Appropriation Right or Change in Use authorization for that Wetland purpose.

3. In addition to the information required by Sections 1-1-110 and 2-2-104 of this Ordinance, an application for an Appropriation Right or Change in Use authorization pursuant to this section shall include the following information:

a. A delineation of pre-project existing Wetlands and post-project Wetlands using a Wetland delineation method approved by the Engineer. The delineation shall describe the following pre-project and post-project

Wetland attributes:

i. the outer Wetland boundary and area in acres;

ii. the boundaries of permanently inundated areas, depth in feet, and area in acres;

iii. the boundaries of seasonally inundated areas, period of inundation, depth in feet, and area in acres;

iv. the boundaries of permanently saturated areas and area in acres;

v. the boundaries of seasonally saturated areas, period of saturation, and area in acres; and

vi. Wetland vegetation boundaries and area in acres.

b. The location and description of the manmade diversions, impoundments; withdrawals, excavations, or other artificial means for the purposes of Appropriation;

c. The flow rate and volume of water to be appropriated in monthly time steps; however, the Office of the Engineer may require a more frequent quantification time step;

d. The consumptive volume for each Wetland attribute delineated pursuant to Section 2-2-124(a) of this Ordinance in monthly time steps; however, the Office of the Engineer may require a more frequent quantification time step;

e. non-consumed water, including flow rate and volume estimates, and a description of return flows and their eventual destination and timing; and

f. the volume of Natural Wetland water supply, if applicable, in monthly time steps.

2-2-125. Notice of Trust Status Conversion for Lands with Appurtenant Water Rights Arising Under State Law Acquired by the Tribes. As provided for by the Compact, Article III.H, the following process shall be used to notify the Water Management Board of the transfer of Tribally-owned fee land to trust status:

1. Starting upon the Effective Date of the Compact, the Tribes may file a Trust Transfer form with the Board for any lands acquired by the Tribes with appurtenant Water Rights Arising Under State Law that have been taken into trust by the United States on behalf of the Tribes.

2. A copy of the deed transferring the fee land to trust status shall be attached to the form.

2-2-126. Water Management Board Adjustment of Priority Date Pursuant to Compact. Upon submission of a Trust Transfer form by the Tribes, the priority date of any Water Rights Arising Under State Law appurtenant to land identified on the Trust Transfer form shall be adjusted by the Water Management Board to July 16, 1855. The Board shall cause the adjusted priority date to be entered into the Reservation water rights database identified in Section 1-1-108 of this Ordinance.

2-2-127. Tribal Utilization of Water Right with Adjusted Priority Date. Any water right whose priority date is adjusted pursuant to Section 2-2-126 of this Ordinance shall be subject to the following use conditions:

1. The water right must be used as historically used; or

2. Changes to the water right must be made pursuant to the provisions set for the in Article IV.B.4 of the Compact and Section 2-2-101 et seq. of this Law of Administration.

2-2-128. Public Water Supply Reporting Requirements

1. The following shall comply with the reporting requirements set forth in subsection (2) of this Section:

a. any new Public Water Supply System approved pursuant to this Ordinance;

b. any Public Water Supply System in existence prior to the effective date of this Ordinance whose authorized use is expanded pursuant to this Ordinance.

2. On an annual basis, any entity responsible for the operation of a Public Water Supply System identified in subsection (1) of this Section shall report to the Office of the Engineer the total volume by month of pumping or diversion of the Public Water Supply System.

Chapter III Enforcement

3-1-101. Scope

1. The enforcement powers set forth in this Chapter apply to the resolution of disputes between Appropriators who are not served by the Flathead Indian Irrigation Project, or between any Appropriators who are not served by the FIIP and any water user(s) or holders of Existing Rights, if any, whose use of water is served by the FIIP. Disputes exclusively between or among users whose water is delivered by the FIIP shall remain subject to the oversight of the Project Operator and the Enforcement provisions of this Ordinance shall not apply. The powers and duties set forth in this Chapter, as they extend to uses of the Tribal Water Right within the FIIP, extend only to the resolution of disputes concerning the delivery of water to FIIP diversion facilities and shall not extend to the administration of that water in FIIP facilities or on lands served by the FIIP, which shall remain subject to the oversight of the Project Operator.

2. Nothing in this Chapter, or in the Ordinance, is intended to preclude a water user from working informally with other water users, any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance, or the Engineer, to resolve disputes or real-time water operation issues without recourse to the provisions of this Chapter. A synopsis of all such resolutions between a water user and any Water Commissioner or the Engineer shall be reduced to writing, and dated, a copy of which shall be kept in the Office of the Engineer

and available for public inspection. A synopsis of any such resolution between or among water users may be reduced to writing. Provided, however, that any water user not party to any such informal resolution who believes himself or herself to be injured by the informal resolution may seek redress by invoking the provisions of this Chapter, subject to the limitation concerning FIIP water use set forth in subsection (1) of this Section, to challenge the informal resolution.

3. Any of the timeframes set forth in Sections 3-1-102 through 3-1-107 of this Ordinance may be extended upon mutual agreement of the parties to any dispute.

3-1-102. Complaint to the Engineer Regarding Actions or Inactions Between Appropriators.

1. Subject to the limitation concerning FIIP water use set forth in Section 3-1-101(1) of this Ordinance, any Appropriator aggrieved by the action or inaction of any other Appropriator, or by any Person the Complainant believes is Wasting water to the detriment of a right to use water the Complainant possesses, may file a Complaint with the Engineer. Such Complaint must be submitted in writing and describe specifically the action or inaction being complained of and the justification for the Complaint.

2. Upon receipt of a Complaint, the Office of the Engineer shall date stamp it and return a copy to the Complainant along with a written statement indicating that informal resolution of the dispute between the Appropriators, or between an Appropriator and a Person accused of Wasting water, may provide a more timely and cost-effective remedy than having the Complaint adjudicated by the Engineer.

3. Within 3 days of the receipt of the Complaint, the Office of the Engineer shall serve a copy of it on the Appropriator or other Person whose action or inaction is being complained of (the "Respondent"), and shall post notice of the Complaint on the Board's website. The notice to the Respondent shall include a written statement indicating that informal resolution of the dispute between the Complainant and the Respondent may provide a more timely and cost-effective remedy than having the petition adjudicated by the Engineer.

3-1-103. Resolution of Complaint.

1. No later than 15 days after the provision of notice of the Complaint to the Respondent, pursuant to Section 3-1-102(3) of this Ordinance, the Engineer or Designee shall hold a hearing on the Complaint, provided, however that the Engineer or Designee may take an additional 10 days before holding the hearing to perform such independent investigation into the Complaint as the Engineer or Designee deems appropriate. At such time, both the Complainant and the Respondent shall explain their positions concerning the matter complained of. All evidence that, in the opinion of the Engineer or Designee, possesses probative value shall be admitted, including

hearsay, if it is the type of evidence commonly relied upon by reasonably prudent Persons in the conduct of their normal business affairs. Rules of privilege recognized by law shall be given effect. Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded.

2. A decision by the Engineer or Designee on the Complaint shall be made in writing within 7 days after the completion of the hearing.

3. The decision of the Engineer or Designee may include an award of declaratory relief, and/or the imposition of conditions on the use or exercise of a water right. Such conditions may include, but are not limited to, instructions regarding the proper delivery of water, the installation of measuring devices, the construction of suitable ditches to carry the return waters from any ditch or lands to the main stream or proper waste way, or the mandate of structural changes to diversion structures.

4. Any Complainant or Respondent dissatisfied with the final decision of the Engineer or Designee may appeal to the Board (and become an Appellant) and obtain review of the Engineer's or Designee's decision. A notice of appeal to the Board must be received by the Board within 30 days of the issuance of the Engineer's or Designee's written decision. The decision of the Engineer or Designee shall not be stayed during the pendency of the appeal unless the Board expressly orders such a stay upon motion of the Complainant or Respondent.

3-1-104. Appeal to the Board.

1. Upon receipt of a notice of appeal pursuant to Section 3-1-103(4) of this Ordinance, or any other Section of this Ordinance that provides for appeal to the Board pursuant to the provisions of this Section, the Board, acting through the Office of the Engineer, shall date stamp the notice and return a copy to the Appellant. Within three days of receipt of the notice of appeal, the Board, acting through the Office of the Engineer, shall serve a copy of the notice of appeal on the other party to the dispute (who becomes the Appellee).

2. Either party to the appeal may elect to have oral argument prior to the resolution of the appeal. The Appellant must request oral argument at the time of the filing of the notice of appeal or the Appellant's right to oral argument is waived. The Appellee must request oral argument within 10 days of the Appellee's receipt of the notice of appeal pursuant to subsection (1) of this Section, or the Appellee's right to oral argument is waived. If either party to the appeal requests oral argument, such argument must be held within 60 days of the filing of the notice of appeal, or within 30 days of the receipt of evidence or argument pursuant to subsection (3) or (4) of this Section, whichever date is later.

3. Within 60 days from the filing of the notice of appeal, or any extended period of time, not to exceed

60 days, granted by the Board, the Appellant and Appellee may each submit additional factual evidence and legal argument concerning the appeal to the Board and shall serve copies of the same on the other party to the dispute.

4. Either party to the appeal shall have 60 days from the date of receipt of the evidence or argument served pursuant to subsection (3) of this Section, or any extended period of time granted by the Board, not to exceed 60 days, to respond in writing to the evidence and argument submitted by the other party to the dispute pursuant to subsection (3) of this Section.

5. If oral argument is held, the argument shall be recorded electronically and an official record maintained.

6. A decision by the Board on the appeal shall be made in writing within 60 days after the completion of oral argument or, if the right to oral argument is waived, within 60 days after the deadline for the submission of evidence and argument pursuant to subsections (3) and (4) of this Section, whichever is later. The written decision shall set forth the ruling of the Board along with a statement of the reasons therefor.

7. In ruling on the appeal, the Board may sustain the decision of the Engineer or Designee, may overturn that decision and set aside any relief ordered by the Engineer or Designee, or may remand the matter to the Engineer or Designee for such further proceedings as may be specified in the Board's written decision.

3-1-105. Petition to the Engineer by Any Appropriator Aggrieved by Actions or Inactions of a Water Commissioner.

1. Any Appropriator aggrieved by the action or inaction or written directive from any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance, may petition the Engineer for relief (and become a Petitioner). Such petition must be submitted in writing and describe with particularity the action, inaction or directive giving rise to the petition and the justification for the petition.

2. Upon receipt of a petition, the Office of the Engineer shall date stamp it and return a copy to the Petitioner along with a written statement indicating that informal resolution of the dispute between the Petitioner and the Water Commissioner may provide a more timely and cost-effective remedy than having the petition adjudicated by the Engineer.

3. Within 3 days of the date stamped on the petition pursuant to subsection (2) of this Section, the Office of the Engineer shall serve a copy of it on the Water Commissioner whose action, inaction or written directive is being petitioned against, and shall post notice of the Petition on the Board's website.

3-1-106. Resolution of Petition.

1. A Petitioner may elect to have the Petition decided on the record after submission of additional evidence and argument, or after hearing. If a Petitioner elects to have a hearing, that request must be made at the same time as the filing of the Petition or the right to a hearing is waived.

2. The Water Commissioner may elect to have the Petition decided after a hearing. The request for a hearing must be made within 5 days of the Water Commissioner's receipt of notice of the Petition pursuant to Section 3-1-105(3) of this Ordinance or the Water Commissioner's right to a hearing is waived.

3. If either the Petitioner or the Water Commissioner elects to have the Petition resolved after a hearing, the Engineer or Designee shall hold a hearing on the Petition no later than 14 days after the filing of the Petition, or within 14 days of the expiration of the time for the submission of evidence or argument pursuant to subsection (5) of this Section, whichever date is later; provided, however that the Engineer or Designee may take an additional 10 days before holding the hearing to perform such independent investigation into the petition as the Engineer or Designee deems appropriate.

4. Within 5 days from the filing of the Petition, or any extended period of time, not to exceed 5 days, granted by the Engineer, the Petitioner and Commissioner may each submit additional factual evidence and legal argument concerning the Petition to the Engineer or Designee and shall serve copies of the same on the other party to the dispute.

5. Either party to the dispute shall have 5 days from the date of receipt of the evidence or argument served pursuant to subsection (4) of this Section, or any extended period of time granted by the Engineer or Designee, not to exceed 5 days, to respond in writing to the evidence and argument submitted by the other party to the dispute pursuant to subsection (4) of this Section.

6. The Petitioner shall bear the burden of proof before the Engineer or Designee.

7. The hearing shall be recorded electronically and an official record maintained. All evidence that, in the opinion of the Engineer or Designee, possesses probative value shall be admitted, including hearsay, if it is the type of evidence commonly relied upon by reasonably prudent Persons in the conduct of their normal business affairs. Rules of privilege recognized by law shall be given effect. Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded.

8. A decision by the Engineer or Designee on the Petition shall be made in writing within 7 days after the completion of the hearing or, if the right to a hearing is waived, within 7 days after the deadline for the submission of evidence and argument pursuant to subsections (4) and (5) of this Section, whichever is later. If the individual

who conducted the hearing becomes unavailable to the Office of the Engineer, a decision may be prepared by an individual who has read the record only if the demeanor of witnesses is considered immaterial by all parties; if any party considers the demeanor of any witness to be material to the resolution of the petition, a new hearing must be held.

9. The decision of the Engineer or Designee may include an award of declaratory relief, and/or the imposition of conditions on the use or exercise of an Appropriation Right or Existing Use. Such conditions may include, but are not limited to, the installation of measuring devices, the construction of suitable ditches to carry the return waters from any ditch or lands to the main stream or proper waste way, or the mandate of structural changes to diversion structures.

10. Any Petitioner or Commissioner dissatisfied with the final decision of the Engineer or Designee may appeal to the Board (and become an Appellant) and obtain review of the Engineer's or Designee's decision. A notice of appeal to the Board must be received by the Board within 30 days of the issuance of the Engineer's or Designee's written decision.

3-1-107. Appeal to the Board from a Decision on a Petition. The process for appeal to the Board of the Engineer's or Designee's decision on a Petition shall be as set forth in Section 3-1-104 of this Ordinance.

3-1-108. Appeal from a Decision of the Board. The process for appeal from a decision of the Board issued pursuant to Section 3-1-104 of this Ordinance shall be as set forth in Section 2-2-112 of this Ordinance.

3-1-109. Emergency Enforcement Powers of the Engineer. In an Emergency, the Engineer, or any Staff who is so directed by the Engineer, or any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance, shall have the authority to lock, remove, render inoperative, shut down, close, seal, cap, modify, or otherwise control methods of diversions and withdrawals, and obstructions to the flow of water, subject to expedited appeal to the Board by the affected Person, as provided in Section 3-1-110 of this Ordinance.

3-1-110. Additional Enforcement Powers of the Engineer.

1. The Engineer, or any Staff who is so directed by the Engineer, or any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance, may enter upon lands on the Reservation with reasonable notice to the owner or occupant, to investigate and inspect methods of diversion, withdrawal, and other activities affecting water quantity, to install measuring devices at the expense of the water user on surface and Groundwater diversions for the purpose of enforcing and administering this Ordinance, to monitor water use, water quality, and diversion structures.

2. The Engineer, or any Staff who is so directed by the Engineer, or any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance, may take action to prevent the Illegal use of water, including, but not limited to the temporary decommissioning of head gates or other diversion Works.

3. The Engineer may issue written notices of violation to Appropriators and to Illegal users of water for violations of this Ordinance or of the terms and conditions of any Appropriation Right or Existing Use or of any lawful order of the Engineer or the Board or any action or directive of any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance.

4. Any notice issued pursuant to subsection (3) of this Section shall specify the particular violation or violations, the step(s) to be taken to come into compliance, and identify a reasonable time frame within which such steps are to be taken.

5. In the event of non-compliance with any written notice issued pursuant to subsection (3) of this Section within the specified time frame, the Engineer may move the Board to exercise its powers pursuant to Sections 3-1-112 and 3-1-113 of this Ordinance.

6. Upon receipt of any written recommendation, pursuant to Section 3-1-115(3) of this Ordinance, from any Water Commissioner, the Engineer or Designee may reject the recommendation or may issue notice of intent to hold a hearing to determine whether the imposition of such conditions identified in the recommendation is warranted. The process for the consideration and resolution of any such matter shall be as set forth in Sections 3-1-105 through 3-1-108 of this Ordinance, with the recommendation being treated as a petition, the Water Commissioner as the Petitioner and the affected water user(s) as Respondent(s).

3-1-111. Expedited Appeal to the Board in the Event of Certain Actions by the Engineer.

1. Any Appropriator whose use of water is affected by an action taken pursuant to Section 3-1-109 or 3-1-110(2) of this Ordinance may file a written notice of appeal with the Board (and become an Appellant). The notice of appeal must describe with particularity the action being appealed and the justification for the appeal.

2. The Board must immediately notify the Engineer of the filing of a notice of appeal pursuant to subsection (1) of this Section, and must hear the appeal within 10 days of the notice of appeal being filed.

3. If the Board finds in favor of the Appellant, it may award appropriate relief, including declaratory relief, but not monetary penalties against the Office of the Engineer or any employee thereof, including any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance, acting in either their professional or personal capacities.

3-1-112. Additional Enforcement Powers of the Board. Upon motion by the Engineer, and after notice to any affected Appropriator and the opportunity for all parties to be heard, the Board may:

1. Impose fines, as set forth in Section 3-1-113 of this Ordinance.

2. Impose conditions on the future use of any Appropriation Right to prevent further violation, but only upon a finding that the holder of any such Appropriation Right is violating or has violated any provision of that Appropriation Right, or is violating or has violated any order issued by the Engineer or any directive of any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance concerning the use of that permit. The process for appeal from any Board decision imposing conditions pursuant to this Section shall be as set forth in Section 2-2-112 of this Ordinance.

3. Revoke or suspend any Appropriation Right, but only upon a finding that the holder of any such Appropriation Right is willfully violating or has willfully violated any provision of that Appropriation Right, or is willfully violating or has willfully violated any order issued by the Engineer concerning the use of that Appropriation Right. The process for appeal from any Board decision revoking or suspending a permit shall be as set forth in Section 2-2-112 of this Ordinance.

3-1-113. Fines.

1. The Board, pursuant to the provisions of this Section, may impose a fine not to exceed $1,000 per violation on any Person who fails to comply with the provisions of this Ordinance, including any written order of the Board or Engineer or written directive of any Water Commissioner.

2. If a Person is using water under the color of law, fines may only be imposed commencing on the day after the resolution of any appeal from the written order of the Board or Engineer or action or written directive of any Water Commissioner whose violation gives rise to the proposed imposition of fines, or the deadline for filing an appeal if no appeal is filed, after receipt of a written notice of violation pursuant to Section 3-1-111(2) of this Ordinance.

3. If a Person is using water Illegally, the Board may impose fines on that Person at any time commencing from the date of that Person's receipt of the notice of violation from the Engineer pursuant to section 3-1-111(3)(a) of this Ordinance, if the Illegal use is not ceased immediately upon receipt of the notice of violation.

4. Each day of violation constitutes a separate violation.

5. The process for appeal from any Board decision imposing fines pursuant to this Section shall be as set forth in Section 2-2-112 of this Ordinance.

3-1-114. Appointment of Water Commissioners. Pursuant to Article IV.I.5.d of the Compact, the Board may appoint one or more Water Commissioners to provide day-to-day administration of water on the Reservation. The appointment shall specify the geographic area for which the commissioner shall have responsibility.

3-1-115. Powers and Duties of Water Commissioners. Subject to the jurisdictional limitation set forth in Article IV.I.5.d.ii of the Compact and Section 3-1-101(1) of this Ordinance, any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance:

1. Shall, consistent with the terms and conditions of the Compact, the federal legislation ratifying the Compact, this Ordinance, and the terms of all applicable Appropriation Rights and Existing Uses, distribute water in the proper priority;

2. Shall, as near as may be practicable, divide, regulate and control the use of the water of all streams, springs, lakes or other sources of water within that Water Commissioner's district to prevent the Waste of water or its use in excess of the volume to which any Appropriator is lawfully entitled, including through the opening and closing of headgates. Whenever a Water Commissioner regulates a headgate to a ditch or the controlling Works of reservoirs, it shall be that Water Commissioner's duty to attach to such headgate or controlling Works a written notice, properly dated and signed, setting forth the fact that such headgate or controlling Works has been properly regulated and is wholly under the Water Commissioner's control and such notice shall be a legal notice to all parties interested in the division and distribution of the water of such ditch or reservoir;

3. Shall notify the Engineer in writing of the non-compliance of any water user with a prior order of the Engineer or the Board or any prior written directive of that Water Commissioner issued pursuant to subsection (4) of this Section;

4. May issue written directives to any Appropriator, or any Illegal user of water, concerning day-to-day actions that must be taken to facilitate the execution of the duties of that Water Commissioner as set forth in subsections (1) and (2) of this Section; and

5. May recommend to the Engineer, in writing, conditions to be placed on the exercise of any Appropriation Right or Existing Use on the Reservation, including the requirement of measuring devices and the necessity of structural changes to diversion or other structures. The Water Commissioner shall serve copies of any such written recommendation on the Appropriator(s) whose Appropriation Right(s) or Existing Use(s) are referenced in the recommendation.

3-1-116. Recourse from Water Commissioner Decisions. Any Person who may be injured by the action

or inaction of a Water Commissioner has the right to petition the Engineer pursuant to the provisions of Section 3-1-105 of this Ordinance.

3-1-117. Removal of Water Commissioners. Water Commissioners shall serve at the pleasure of the Board and may be removed by unanimous vote of the Board at any time.

**Section 3.** Section 3-7-211, MCA, is amended to read:

**"3-7-211. Appointment of water commissioners.** ~~The~~ Except as provided in [section 2], the district court having jurisdiction over the hydrologically interrelated portion of a water division, as described in 85-2-231(3), in which the controversy arises may appoint and supervise a water commissioner as provided for in Title 85, chapter 5."

**Section 4.** Section 85-2-111, MCA, is amended to read:

**"85-2-111. Department powers.** (1) The department may:

~~(1)~~(a) enter into agreements with federal, state, or local agencies necessary to carry out this chapter;

~~(2)~~(b) apply for, accept, administer, and expend funds, grants, gifts, and loans from the federal government or any other public or private source for the purposes of this chapter.

(2) The department shall, pursuant to [sections 1 and 2], recognize the jurisdiction of the Flathead reservation water management board over water rights, including permitting of new uses, changes of existing uses, enforcement of water right calls, and all aspects of enforcement within the exterior boundaries of the Flathead Indian reservation."

**Section 5.** Section 85-2-114, MCA, is amended to read:

**"85-2-114. Judicial enforcement.** (1) If the department ascertains, by a means reasonably considered sufficient by it, that a person is wasting water, using water unlawfully, preventing water from moving to another person having a prior right to use the water, or violating a provision of this chapter, it may petition the district court supervising the distribution of water among appropriators from the source to:

(a) regulate the controlling works of an appropriation as may be necessary to prevent the wasting or unlawful use of water or to secure water to a person having a prior right to its use;

(b) order the person wasting, unlawfully using, or interfering with another's rightful use of the water to

cease and desist from doing so and to take steps that may be necessary to remedy the waste, unlawful use, or interference; or

(c) issue a temporary, preliminary, or permanent injunction to prevent a violation of this chapter. Notwithstanding the provisions of Title 27, chapter 19, part 3, a temporary restraining order must be granted if it clearly appears from the specific facts shown by affidavit or by the verified complaint that a provision of this chapter is being violated.

(2) Upon the issuance of an order or injunction, the department may attach to the controlling works a written notice, properly dated and signed, setting forth the fact that the controlling works have been properly regulated by it. The notice constitutes legal notice to all persons interested in the appropriation or distribution of the water.

(3) The department may also direct its own attorney or request the attorney general or county attorney to bring suit to enjoin the waste, unlawful use, interference, or violation.

(4) The county attorney or the attorney general may bring suit to enjoin the waste, unlawful use, interference, or violation or bring an action under 85-2-122(1) without being requested to do so by the department.

(5) A county attorney who takes action pursuant to subsection (3) or (4) may request assistance from the attorney general.

(6) When enforcing the provisions of this section, the department, the county attorney, and the attorney general shall give priority to protecting the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation.

(7) After considering the provisions of subsection (6), the department may attempt to obtain voluntary compliance through warning, conference, or any other appropriate means before petitioning the district court under subsection (1). An attempt to obtain voluntary compliance under this subsection must extend over a period of at least 7 days and may not exceed 30 working days.

(8) Pursuant to [section 2], the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation."

**Section 6.** Section 85-2-301, MCA, is amended to read:

**"85-2-301. Right to appropriate -- recognition and confirmation of permits issued after July 1, 1973.** (1) After July 1, 1973, a person may not appropriate water except as provided in this chapter. A person may

appropriate water only for a beneficial use.

(2) (a) Only the department may appropriate water by permit for transport outside the following river basins:

(i) the Clark Fork River and its tributaries to its confluence with Lake Pend Oreille in Idaho;

(ii) the Kootenai River and its tributaries to its confluence with Kootenay Lake in British Columbia;

(iii) the St. Mary River and its tributaries to its confluence with the Oldman River in Alberta;

(iv) the Little Missouri River and its tributaries to its confluence with Lake Sakakawea in North Dakota;

(v) the Missouri River and its tributaries to its confluence with the Yellowstone River in North Dakota; and

(vi) the Yellowstone River and its tributaries to its confluence with the Missouri River in North Dakota.

(b) The department may lease water subject to this subsection (2) under the provisions of 85-2-141.

(3) A right to appropriate water may not be acquired by any other method, including by adverse use, adverse possession, prescription, or estoppel. The method prescribed by this chapter is exclusive.

(4) All permit actions of the department after July 1, 1973, are recognized and confirmed subject to this part and any terms, conditions, and limitations placed on a permit by the department.

(5) Pursuant to [section 2], the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation."

**Section 7.** Section 85-2-302, MCA, is amended to read:

**"85-2-302. Application for permit or change in appropriation right.** (1) Except as provided in 85-2-306 and 85-2-369, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or related distribution works unless the person applies for and receives a permit or an authorization for a change in appropriation right from the department.

(2) The department shall adopt rules that are necessary to determine whether or not an application is correct and complete, based on the provisions applicable to issuance of a permit under this part or a change in appropriation right pursuant to Title 85, chapter 2, part 4. The rules must be adopted in compliance with Title 2, chapter 4.

(3) The application must be made on a form prescribed by the department. The department shall make the forms available through its offices.

(4) (a) Subject to subsection (4)(b), the applicant shall submit a correct and complete application. The

determination of whether an application is correct and complete must be based on rules adopted under subsection (2) that are in effect at the time the application is submitted.

(b) If an application is for a permit to appropriate water with a point of diversion, conveyance, or place of use on national forest system lands, the application is not correct and complete under this section until the applicant has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.

(5) The department shall notify the applicant of any defects in an application within 180 days. The defects must be identified by reference to the rules adopted under subsection (2). If the department does not notify the applicant of any defects within 180 days, the application must be treated as a correct and complete application.

(6) An application does not lose priority of filing because of defects if the application is corrected or completed within 30 days of the date of notification of the defects or within a further time as the department may allow, but not to exceed 90 days from the date of notification. If an application is made correct and complete after the mandated time period, but within 90 days of the date of notification of the defects, the priority date of the application is the date the application is made correct and complete.

(7) An application not corrected or completed within 90 days from the date of notification of the defects is terminated.

(8) Pursuant to [section 2], the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation."

**Section 8.** Section 85-2-306, MCA, is amended to read:

**"85-2-306. Exceptions to permit requirements.** (1) (a) Except as provided in subsection (1)(b), ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works.

(b) If another person has rights in the ground water development works, water may be appropriated with the written consent of the person with those property rights or, if the ground water development works are on national forest system lands, with any prior written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the certificate.

(c) If the person does not have a possessory interest in the real property from which the ground water may be appropriated, the person shall provide to the owner of the real property written notification of the works and the person's intent to appropriate ground water from the works. The written notification must be provided to the landowner at least 30 days prior to constructing any associated works or, if no new or expanded works are proposed, 30 days prior to appropriating the water. The written notification under this subsection is a notice requirement only and does not create an easement in or over the real property where the ground water development works are located.

(2) Inside the boundaries of a controlled ground water area, ground water may be appropriated only:

(a) according to a permit received pursuant to 85-2-508; or

(b) according to the requirements of a rule promulgated pursuant to 85-2-506.

(3) (a) Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring:

(i) when the appropriation is made by a local governmental fire agency organized under Title 7, chapter 33, and the appropriation is used only for emergency fire protection, which may include enclosed storage;

(ii) when a maximum appropriation of 350 gallons a minute or less is used in nonconsumptive geothermal heating or cooling exchange applications, all of the water extracted is returned without delay to the same source aquifer, and the distance between the extraction well and both the nearest existing well and the hydraulically connected surface waters is more than twice the distance between the extraction well and the injection well;

(iii) when the appropriation is outside a stream depletion zone, is 35 gallons a minute or less, and does not exceed 10 acre-feet a year, except that a combined appropriation from the same source by two or more wells or developed springs exceeding 10 acre-feet, regardless of the flow rate, requires a permit; or

(iv) when the appropriation is within a stream depletion zone, is 20 gallons a minute or less, and does not exceed 2 acre-feet a year, except that a combined appropriation from the same source by two or more wells or developed springs exceeding this limitation requires a permit.

(b) (i) Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department through its offices.

(ii) Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A

notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iii) If a notice is not corrected and completed within the time allowed, the priority date of appropriation is the date of refiling a correct and complete notice with the department.

(c) A certificate of water right may not be issued until a correct and complete notice has been filed with the department, including proof of landowner notification or a written federal special use authorization as necessary under subsection (1). The original of the certificate must be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(4) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (3), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing of a notice, as provided in subsection (3), or the date of the filing of the claim of existing water right.

(5) An appropriation under subsection (4) is an existing right, and a permit is not required. However, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(6) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if:

(a) the maximum capacity of the impoundment or pit is less than 15 acre-feet;

(b) the appropriation is less than 30 acre-feet a year;

(c) the appropriation is from a source other than a perennial flowing stream; and

(d) the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger.

(7) (a) Within 60 days after constructing an impoundment or pit, the appropriator shall apply for a permit

as prescribed by this part. Subject to subsection (7)(b), upon receipt of a correct and complete application for a stock water provisional permit, the department shall automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights of other appropriators.

(b) If the impoundment or pit is on national forest system lands, an application is not correct and complete under this section until the applicant has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.

(8) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the department under 85-2-113.

(9) Pursuant to [section 2], the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation."

**Section 9.** Section 85-2-427, MCA, is amended to read:

**"85-2-427. (Temporary) Temporary lease of appropriation right -- requirements -- rulemaking.** (1) Applications to temporarily lease an appropriation right that comply with the requirements of this section are not subject to the provisions of 85-2-402, 85-2-407, 85-2-408, or 85-2-436. After obtaining department approval pursuant to this section, an appropriator may temporarily lease an appropriation right.

(2) The amount of water leased may not exceed the total consumptive use of the appropriation right. For an irrigation right, the consumptive volume may not exceed 1 acre-foot per acre irrigated. The department shall determine the consumptive volume limits for other uses by rule.

(3) (a) Each appropriation right leased pursuant to this section:

(i) must have been used within 5 years prior to the application date;

(ii) may be leased only during the period of diversion for the appropriation right; and

(iii) may not be leased for more than 2 years one time during any consecutive 10-year period.

(b) The volume of water leased may not exceed 180 acre-feet per year.

(c) The point of diversion for the appropriation right may not be changed.

(4) The use of any appropriation rights on the place of use associated with a leased appropriation right is forbidden during the term of the lease.

(5) Storage may not be added to the leased appropriation right at the point of diversion or the original place of use.

(6) This section does not apply to changes in an appropriation right that would result in leased water being transported outside Montana. Proposed out-of-state uses are subject to the provisions of 85-2-402.

(7) Water leased pursuant to this section must be measured at the point of diversion by a meter approved by the department. The appropriator shall report the amount of water measured at the end of the year in which the lease occurred or upon request of the department.

(8) An applicant proposing to lease an appropriation right pursuant to this section shall submit a correct and complete application on a form provided by the department and a fee as established by rule. The application must include:

(a) the name and address of each lessee;

(b) the name of all owners of each appropriation right;

(c) the number of each appropriation right;

(d) the proposed use and the place of use for the leased water;

(e) the source of water to be appropriated;

(f) the start and end dates of the proposed lease;

(g) the proposed diversion flow rate and volume of water to be used during the lease;

(h) evidence that the appropriation right has been used within the last 5 years;

(i) a description of how the existing use of the appropriation rights would cease at the place of use during the lease period, including the number and location of acres to be removed from irrigation, if applicable; and

(j) an analysis of potential adverse effects and a description of planned actions to mitigate potential adverse effects.

(9) Within 30 days of receiving the application, the department shall approve or deny the application. An approved application must be correct and complete and meet the requirements of this section. The department may approve an application with conditions.

(10) After approval, the department shall provide notice of the proposed lease that includes the information in subsections (8)(a) through (8)(g). The department shall:

(a) mail individual notice to potentially affected appropriators identified by the department in the area of the point of diversion; and

(b) post the notice on the department's website.

(11) (a) For 60 days from the date that notice is mailed pursuant to subsection (10), the department shall accept correct and complete objections to the proposed lease from any person whose property, water rights, or interests would be adversely affected by the proposed appropriation. The objection must be made on a form provided by the department.

(b) The department shall determine if an objection is valid. A valid objection contains facts indicating that the rights of other appropriators would be adversely affected by the lease of the appropriation right. If the department determines that an objection is valid, the approval for the use of the appropriation right under the lease is canceled and no water may be used pursuant to the lease.

(c) The owner of an appropriation right whose approval is canceled under subsection (11)(b) may request a hearing on the objection pursuant to 2-4-604 within 15 days of notice of the cancellation. The department shall issue an order reinstating approval for the use of the appropriation right under the lease if the applicant proves by a preponderance of the evidence that the water rights of other appropriators will not be adversely affected by the lease.

(12) Leased water may not be put to use until a final determination is made pursuant to subsection (11). The lessee shall provide the department with a copy of the executed lease agreement before the leased water is put to use.

(13) Violations of this section are subject to the provisions of 85-2-114 and 85-2-122. This subsection does not limit the remedies available to an appropriator to enjoin or seek damages from the owner of an appropriation right who leased the water or from a lessee.

(14) The department shall adopt rules to implement this section. The rules must include definitions of consumptive uses and criteria for determining if an appropriation right has been used in the 5 years prior to the temporary lease application.

(15) The department shall report annually to the water policy interim committee provided for in 5-5-231. The report must include the number of leases, the amount of water leased, and the number of irrigated acres taken out of production.

(16) Pursuant to [section 2], the provisions of this section do not apply within the exterior boundaries of

the Flathead Indian reservation. (Terminates July 1, 2019--sec. 4, Ch. 236, L. 2013.)"

**Section 10.** Section 85-2-506, MCA, is amended to read:

**"85-2-506. Controlled ground water areas -- designation or modification.** (1) The department may by rule designate or modify permanent or temporary controlled ground water areas as provided in this part. The rule for each controlled ground water area must designate the boundaries of the controlled ground water area.

(2) The rulemaking process for designation or modification of a controlled ground water area may be initiated by:

(a) the department;

(b) submission of a correct and complete petition from a state or local public health agency for identified public health risks; or

(c) submission of a correct and complete petition:

(i) by a municipality, county, conservation district, or local water quality district formed under Title 7, chapter 13, part 45; or

(ii) signed by at least one-third of the water right holders in a proposed controlled ground water area.

(3) (a) A correct and complete petition must:

(i) be in a form prescribed by the department and must contain analysis prepared by a hydrogeologist, a qualified scientist, or a qualified licensed professional engineer concluding that one or more of the criteria provided in subsection (5) are met; and

(ii) describe proposed measures, if any, to mitigate effects of the criteria identified in subsection (5) that are alleged in the petition.

(b) When the department proposes a rule pursuant to this section, the place for the hearing must be within or as close as practical to the proposed or existing controlled ground water area.

(c) (i) The department shall notify the petitioner of any defects in a petition within 180 days. If the department does not notify the petitioner of any defects within 180 days, the petition must be treated as correct and complete.

(ii) A petition that is not made correct and complete within 90 days from the date of notification by the department of any defect is terminated.

(4) (a) Within 60 days after a petition is determined to be correct and complete, the department shall:

(i) deny in writing the petition in whole or in part, stating the reasons for denial;

(ii) inform the petitioner that the department will study the information presented in the petition for a period not to exceed 90 days before denying or proceeding with the petition; or

(iii) initiate rulemaking proceedings in accordance with Title 2, chapter 4, part 3.

(b) Failure of the department to act under subsection (4)(a) does not mandate that the department grant the petition for rulemaking.

(c) In addition to the notice requirements of Title 2, chapter 4, parts 1 through 4, the department shall provide public notice of the rulemaking hearing by:

(i) publishing a notice at least once each week for 3 successive weeks, with the first notice not less than 30 days before the date of the hearing in a newspaper of general circulation in the county or counties in which the proposed controlled ground water area is located;

(ii) serving by mail a copy of the notice, not less than 30 days before the hearing, upon each person or public agency known from an examination of the records of the department to be a water right holder with a diversion within the proposed controlled ground water area, all landowners of record within the proposed controlled ground water area, and each well driller licensed in Montana whose address is within any county in which any part of the proposed controlled ground water area is located; and

(iii) serving by mail a copy of the notice upon any other person or state or federal agency that the department feels may be interested in or affected by the proposed designation or modification of a controlled ground water area.

(d) The notice under subsection (4)(c) must include a summary of the basis for the proposed rule. Publication and mailing of the notice as prescribed in this section, when completed, is considered to be sufficient notice of the hearing to all interested persons.

(5) The department may designate a permanent controlled ground water area by rule if it finds by a preponderance of the evidence that any of the following criteria have been met and cannot be appropriately mitigated:

(a) current or projected reductions of recharge to the aquifer or aquifers in the proposed controlled ground water area will cause ground water levels to decline to the extent that water right holders cannot reasonably exercise their water rights;

(b) current or projected ground water withdrawals from the aquifer or aquifers in the proposed controlled

ground water area have reduced or will reduce ground water levels or surface water availability necessary for water right holders to reasonably exercise their water rights;

(c) current or projected ground water withdrawals from the aquifer or aquifers in the proposed controlled ground water area have induced or altered or will induce or alter contaminant migration exceeding relevant water quality standards;

(d) current or projected ground water withdrawals from the aquifer or aquifers in the proposed controlled ground water area have impaired or will impair ground water quality necessary for water right holders to reasonably exercise their water rights based on relevant water quality standards;

(e) ground water within the proposed controlled ground water area is not suited for beneficial use; or

(f) public health, safety, or welfare is or will become at risk.

(6) (a) If the department finds that sufficient facts are not available to designate a permanent controlled ground water area, it may designate by rule a temporary controlled ground water area to allow studies to obtain the facts needed to determine whether or not it is appropriate to designate a permanent controlled ground water area. The department shall set the length of time that the temporary controlled ground water area will be in effect. Subject to subsection (6)(c), the term of a temporary controlled ground water area may be extended by rule.

(b) A temporary controlled ground water area designation is for the purpose of study and cannot include the control provisions provided in subsection (7), other than measurement, water quality testing, and reporting requirements.

(c) A temporary controlled ground water area designation may not exceed a total of 6 years, including any extensions.

(d) Prior to expiration of a temporary controlled ground water area, the department may amend or repeal the rule establishing the temporary controlled ground water area or may designate a permanent controlled ground water area through the rulemaking process under this section.

(e) Studies for temporary controlled ground water areas may be considered for funding under the renewable resource grant and loan program in Title 85, chapter 1, part 6.

(f) If there is a ground water investigation program within the bureau, the ground water assessment steering committee established by 2-15-1523 shall consider temporary controlled ground water areas for study.

(7) A controlled ground water area may include but is not limited to the following control provisions:

(a) a provision closing the controlled ground water area to further appropriation of ground water;

(b) a provision restricting the development of future ground water appropriations in the controlled ground water area by flow, volume, purpose, aquifer, depth, water temperature, water quality, density, or other criteria that the department determines necessary;

(c) a provision requiring measurement of future ground water or surface water appropriations;

(d) a provision requiring the filing of notice on land records within the boundary of a permanent controlled ground water area to inform prospective holders of an interest in the property of the existence of a permanent controlled ground water area. Notice of the designation must be removed or modified as necessary to accurately reflect modification or repeal of a permanent designation within 60 days.

(e) a provision for well spacing requirements, well construction constraints, and prior department approval before well drilling, unless the well is regulated pursuant to Title 82, chapter 11;

(f) a provision for mitigation of ground water withdrawals;

(g) a provision for water quality testing;

(h) a provision for data reporting to the department; and

(i) other control provisions that the department determines are appropriate and adopts through rulemaking.

(8) Pursuant to [section 2], the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation."

**Section 11.** Section 85-5-110, MCA, is amended to read:

**"85-5-110. Appointment of water mediators -- duties.** (1) ~~The~~ Except as provided in [section 2], the judge of the district court may appoint a water mediator to mediate a water controversy in a decreed or nondecreed basin under the following circumstances:

(a) upon request of the governor;

(b) upon petition by at least 15% of the owners of water rights in a decreed or nondecreed basin; or

(c) in the discretion of the district court having jurisdiction.

(2) A water mediator appointed under this section may:

(a) discuss proposed solutions to a water controversy with affected water right holders;

(b) review options related to scheduling and coordinating water use with affected water right holders;

(c) discuss water use and water needs with persons and entities affected by the existing water use;

(d) meet with principal parties to mediate differences over the use of water; and

(e) hold public meetings and conferences to discuss and negotiate potential solutions to controversies over use of water.

(3) If the governor requests or a state agency petitions for a water mediator, the governor or agency shall pay all or a majority of the costs of the water mediator as determined equitable by the district court having jurisdiction.

(4) The governor may use funds appropriated under 75-1-1101 to pay the costs of a water mediator.

(5) This section does not allow a water mediator to require any valid water right holder to compromise or reduce any of the holder's existing water rights.

(6) If an appropriator voluntarily ceases to use all or part of an appropriation right or voluntarily ceases to use an appropriation right according to its terms and conditions as a result of the efforts of a mediator appointed under this section, the appropriator may not be considered to have abandoned all or any portion of the appropriation right."

**Section 12. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

**Section 13. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 85, chapter 20, and the provisions of Title 85, chapter 20, apply to [sections 1 and 2].

**Section 14. Effective date.** [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,

SB 0262, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day

of _____, 2015.

Speaker of the House

Signed this _____ day

of _____, 2015.

SENATE BILL NO. 262

INTRODUCED BY C. VINCENT, P. CONNELL, S. FITZPATRICK, B. HAMLETT, S. STEWART-PEREGOY, K. WILLIAMS

AN ACT RATIFYING A WATER RIGHTS COMPACT ENTERED INTO BY THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION, THE STATE OF MONTANA, AND THE UNITED STATES OF AMERICA; CREATING A UNITARY ADMINISTRATION AND MANAGEMENT ORDINANCE TO GOVERN WATER RIGHTS ON THE FLATHEAD RESERVATION; PROVIDING EXCEPTIONS FROM CERTAIN STATE WATER LAWS RELATED TO DEPARTMENT POWERS, JUDICIAL ENFORCEMENT, AND WATER RIGHTS PERMITTING; AMENDING SECTIONS 3-7-211, 85-2-111, 85-2-114, 85-2-301, 85-2-302, 85-2-306, 85-2-427, 85-2-506, AND 85-5-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

# Fiscal Note 2017 Biennium

| | | | |
|---|---|---|---|
| **Bill #** | SB0262 | **Title:** | Implement CSKT water rights settlement |
| **Primary Sponsor:** | Vincent, Chas | **Status:** | As Introduced |

☐ Significant Local Gov Impact ☐ Needs to be included in HB 2 ☐ Technical Concerns

☑ Included in the Executive Budget ☑ Significant Long-Term Impacts ☐ Dedicated Revenue Form Attached

## FISCAL SUMMARY

| | FY 2016 Difference | FY 2017 Difference | FY 2018 Difference | FY 2019 Difference |
|---|---|---|---|---|
| **Expenditures:** | | | | |
| General Fund | $8,000,000 | $0 | $0 | $0 |
| State Special Revenue | $0 | $0 | $0 | $0 |
| **Revenue:** | | | | |
| General Fund | $0 | $0 | $0 | $0 |
| State Special Revenue | $0 | $0 | $0 | $0 |
| **Net Impact-General Fund Balance:** | ($8,000,000) | $0 | $0 | $0 |

**Description of fiscal impact:** SB 262 ratifies the water rights compact between the state and the Confederated Salish and Kootenai Tribes. It commits the state to an eventual contribution to settlement, of which $8 million is included in the Executive Budget and may be spent during the 2017 biennium for purposes of water measurement, on-farm efficiency, and development of alternative stock water sources on the Flathead Indian Irrigation Project (FIIP).

## FISCAL ANALYSIS

**Assumptions:**

1. SB 262 obligates the state to authorize appropriations to meet its settlement commitments within five years from the date the compact is ratified by the United States Congress.
2. SB 262 commits the state to a $55 million contribution to settlement for irrigation improvements and habitat enhancement on and surrounding the Flathead Indian Irrigation Project (FIIP).
3. $8 million is included in the Executive Budget for the 2017 biennium which will count toward satisfaction of the state's contributions to the total settlement. The $8 million will be put toward water measurement activities, improving on-farm efficiency, and mitigating the loss of stock water deliveries from the FIIP. This $8 million is a portion of the state's eventual total contribution (see Long-Term Impact 1).

4. SB 262 establishes a five-member Compact Implementation Technical Team, for which the state has responsibility to supply one technical staff member FTE along with any necessary supporting staff. These positions will be filled from existing DNRC staff from the Compact Implementation Bureau within the Water Resources Division.

**Secretary of State**

5. This bill will have minimal cost for postage and administrative duties related to tribal notifications in Section 21 of the bill. The Office of the Secretary of State does not receive general fund monies for office operations, but will assume the fiscal responsibility for this bill.

| | FY 2016 Difference | FY 2017 Difference | FY 2018 Difference | FY 2019 Difference |
|---|---|---|---|---|
| **Fiscal Impact:** | | | | |
| **Expenditures:** | | | | |
| Personal Services | $0 | $0 | $0 | $0 |
| Operating Expenses | $8,000,000 | $0 | $0 | $0 |
| **TOTAL Expenditures** | $8,000,000 | $0 | $0 | $0 |
| **Funding of Expenditures:** | | | | |
| General Fund (01) | $8,000,000 | $0 | $0 | $0 |
| State Special Revenue (02) | $0 | $0 | $0 | $0 |
| **TOTAL Funding of Exp.** | $8,000,000 | $0 | $0 | $0 |
| **Revenues:** | | | | |
| General Fund (01) | $0 | $0 | $0 | $0 |
| State Special Revenue (02) | $0 | $0 | $0 | $0 |
| **TOTAL Revenues** | $0 | $0 | $0 | $0 |
| **Net Impact to Fund Balance (Revenue minus Funding of Expenditures):** | | | | |
| General Fund (01) | ($8,000,000) | $0 | $0 | $0 |
| State Special Revenue (02) | $0 | $0 | $0 | $0 |

**Long-Term Impacts:**

1. SB 262 commits the state to a $55 million contribution to settlement for irrigation improvements and habitat enhancement on and surrounding the Flathead Indian Irrigation Project (FIIP). In addition to the $8 million dollars in the executive budget for the FY 17 biennium (see Assumption 3), $47 million will be committed by the state in later years to fulfill the state's commitments to the settlement. The state's total contribution to settlement will be allocated as follows:
    a. $30 million to offset costs associated with compact implementation and related projects;
    b. $4 million for water measurement activities;
    c. $4 million for improving on-farm efficiency;
    d. $4 million for mitigating the loss of stock water deliveries from the FIIP; and
    e. $13 million to provide for aquatic and terrestrial habitat enhancement.
2. The settlement commitments articulated in SB 262 represent the costs associated with achieving a settlement of the Confederated Salish and Kootenai Tribes reserved water rights in a way that protects existing uses on and off the reservation. $42 million of the state's eventual contribution to settlement will go directly toward improvements to the FIIP that will help protect existing uses of water while meeting tribal instream flow water rights.

3. In addition to the state's eventual contribution to settlement, SB 262 commits the state to covering costs associated with two and a half positions on a five-member water management board that will administer water rights on the Reservation once the Compact becomes effective following approval by the state, the tribes, and the United States.

| *Sponsor's Initials* | *Date* | *Budget Director's Initials* | *Date* |
|---|---|---|---|

SENATE BILL NO. 262

INTRODUCED BY C. VINCENT

A BILL FOR AN ACT ENTITLED: "AN ACT RATIFYING A WATER RIGHTS COMPACT ENTERED INTO BY THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION, THE STATE OF MONTANA, AND THE UNITED STATES OF AMERICA; CREATING A UNITARY ADMINISTRATION AND MANAGEMENT ORDINANCE TO GOVERN WATER RIGHTS ON THE FLATHEAD RESERVATION; PROVIDING EXCEPTIONS FROM CERTAIN STATE WATER LAWS RELATED TO DEPARTMENT POWERS, JUDICIAL ENFORCEMENT, AND WATER RIGHTS PERMITTING; AMENDING SECTIONS 3-7-211, 85-2-111, 85-2-114, 85-2-301, 85-2-302, 85-2-306, 85-2-427, 85-2-506, AND 85-5-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Water rights compact entered into by the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, the State of Montana, and the United States ratified.** This Compact is entered into by and among the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, the State of Montana, and the United State of America to settle all existing claims to water of or on behalf of the Confederated Salish and Kootenai Tribes within the State of Montana.

ARTICLE I - RECITALS

WHEREAS, pursuant to the Hellgate Treaty of 1855, 12 Stat. 975, the Confederated Salish and Kootenai Tribes reserved the Flathead Indian Reservation; and

WHEREAS, the Confederated Salish and Kootenai Tribes claim aboriginal water rights and, pursuant to said Treaty, reserved water rights to fulfill the purposes of the Treaty and the Reservation; and

WHEREAS, in 1979, the United States, on its own behalf and on behalf of the Confederated Salish and Kootenai Tribes, their members and Allottees brought suit in the United States District Court for the District of Montana to obtain a final determination of the Tribes' water rights claims, see United States v. Abell, No. CIV-79-33-M (filed April 5, 1979); and

WHEREAS, as a result of Congressional action and subsequent judicial interpretation, state courts have been found to possess, under certain circumstances, adjudicatory jurisdiction over federal reserved water rights

held in trust by the United States for the benefit of Indians; see, McCarran Amendment 43 U.S.C. 666; Colorado River Conservation District v. United States, 424 U.S. 800 (1976); Arizona v. San Carlos Apache Tribe, 463 U.S. 545 (1983); and

WHEREAS, the State of Montana initiated a general stream adjudication pursuant to the provisions of Chapter 697, Laws of Montana 1979, which includes claims regarding the Confederated Salish and Kootenai Tribes' water rights; and

WHEREAS, the Montana Reserved Water Rights Compact Commission, under 85-2-702(1), MCA, is authorized to negotiate settlement of water rights claims filed by Indian tribes or filed on their behalf by the United States claiming reserved waters within the State of Montana; and

WHEREAS, the Federal district court litigation was stayed in 1983 pending the outcome of Montana State court water adjudication proceedings, see Northern Cheyenne v. Adsit, 721 F.2d 1187 (9th Cir.1983); and

WHEREAS, the adjudication of Confederated Salish and Kootenai Tribes' water rights in the State court proceeding has been stayed while negotiations are proceeding to conclude a compact resolving all water rights claims of the Confederated Salish and Kootenai Tribes; and

WHEREAS, the Confederated Salish and Kootenai Tribes, or their duly designated representatives, have authority to negotiate the Compact and the Tribal Council has the authority to execute this Compact pursuant to Article 6, Section 1, subsections (a), (c), and (u) of the Constitution and Bylaws of the Confederated Salish and Kootenai Tribes said Constitution adopted and approved under Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended; and

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. 516-17 and the Federal legislation ratifying this Compact identified in Article VIII.B; and

WHEREAS, the Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this Compact on behalf of the United States Department of the Interior pursuant to 43 U.S.C. 1457, inter alia, and appropriate Federal legislation ratifying this Compact as identified in Article VIII.B; and

WHEREAS, the Confederated Salish and Kootenai Tribes, the State of Montana, and the United States agree that the Tribal Water Right and other water rights described in this Compact, subject to the provisions of the Act of Congress identified in Article VIII.B, is in satisfaction of the water rights claims of the Tribes, their

members and Allottees, and of the United States on behalf of the Tribes and their members and Allottees; and

WHEREAS, the Parties agree that it is in the best interest of all Parties that the water rights claims of the Confederated Salish and Kootenai Tribes be settled through agreement between and among the Tribes, the State of Montana, and the United States; and

WHEREAS, the Parties agree that there is a clear hydrological interrelationship between the surface water and Groundwater of the Reservation, and each use of water on the Reservation may affect water use by all water users on the Reservation; and

WHEREAS, the Parties agree that prudent and knowledgeable conservation, management, and protection of the water resources of the Reservation are essential to the health and welfare of all residents of the Reservation; and

WHEREAS, the Parties seek to secure to all residents of the Reservation the quiet enjoyment of the use of waters of the Reservation for beneficial uses; and

WHEREAS, the Parties agree to protect Tribal Instream Flows, Existing Uses, and Historic Farm Deliveries to Flathead Indian Irrigation Project irrigators; and

WHEREAS, the Parties desire to create a unitary administration system that would provide a single system for the appropriation and administration of the waters of the Reservation and for the establishment and maintenance of a single system of centralized records for all water uses of the Reservation regardless of whether the use is based on State or Federal law.

NOW THEREFORE, the Parties agree to enter into the Compact for the purpose of settling the water rights claims of the Confederated Salish and Kootenai Tribes, their members, and Allottees of the Flathead Indian Reservation, and of the United States on behalf of the Tribes, their members and Allottees, and to provide the necessary foundation for the establishment of a board composed of Tribal and State appointed representatives to provide for the unified administration of all water resources on the Reservation.

## ARTICLE II - DEFINITIONS

The following definitions shall apply for purposes of the Compact:

1. "Acre-foot" or "Acre-feet" means the amount of water necessary to cover one acre to a depth of one foot and is equivalent to 43,560 cubic feet of water.

2. "Adaptive Management" means an ongoing process of decision-making, based on water measurement and accounting designed to continuously manage and improve the allocation of water between Instream Flows, Minimum Reservoir Pool Elevations, and FIIP Water Use Rights pursuant to the Adaptive Management Appendix

3.5.

3. "Allottee" or "Allottees" means an owner of an interest in a tract of land held in trust by the United States which was allotted pursuant to the Act of April 23, 1904, 33 Stat. 302, as amended, or the Act of February 25, 1920, 41 Stat. 452, as amended.

4. "Alternate Value" means, as applied to the consensual agreements provided for by Article III.G.3, the quantity of water allowed under a claim decreed by the Montana Water Court or water right granted by the DNRC.

5. "Appropriation Right" means a right to appropriate water issued by the Water Management Board pursuant to the terms of this Compact and the Law of Administration.

6. "Arising Under State Law" means, as applied to a water right, a water right created under Montana law or a water right held by a nonmember of the Tribes on land not held in trust by the United States for the Tribes or a Tribal member and for which a claim was required to be filed in the Montana general stream adjudication.

7. "Basin 76D" means the hydrologic Basin 76D, including the Kootenai River and its tributaries, as shown in Appendix 1.

8. "Basin 76E" means the hydrologic Basin 76E, including Rock Creek and its tributaries, as shown in Appendix 1.

9. "Basin 76F" means the hydrologic Basin 76F, including the Blackfoot River and its tributaries, as shown in Appendix 1.

10. "Basin 76G" means the hydrologic Basin 76G, including the Clark Fork River above the Blackfoot River, and its tributaries, as shown in Appendix 1.

11. "Basin 76GJ" means the hydrologic Basin 76GJ, including Flint Creek and its tributaries, as shown in Appendix 1.

12. "Basin 76H" means the hydrologic Basin 76H, including the Bitterroot River and its tributaries, as shown in Appendix 1.

13. "Basin 76I" means the hydrologic Basin 76I, including the Middle Fork of the Flathead River and its tributaries, as shown in Appendix 1.

14. "Basin 76J" means the hydrologic Basin 76J, including the South Fork of the Flathead River and its tributaries, as shown in Appendix 1.

15. "Basin 76K" means the hydrologic Basin 76K, including the Swan River and its tributaries, as shown in Appendix 1.

16. "Basin 76L" means the hydrologic Basin 76L, including the Flathead River below Flathead Lake, and

its tributaries, as shown in Appendix 1.

17. "Basin 76LJ" means the hydrologic Basin 76LJ, including the Flathead River to and including Flathead Lake, and its tributaries, as shown in Appendix 1.

18. "Basin 76M" means the hydrologic Basin 76M, including the Clark Fork River between the Blackfoot River and the Flathead River, and its tributaries, as shown in Appendix 1.

19. "Basin 76N" means the hydrologic Basin 76N, including the Clark Fork River below the Flathead River, and its tributaries, as shown in Appendix 1.

20. "Call" means the right of the holder of a water right with a senior priority date and an immediate need for a use of water to require a holder of a water right with a junior priority date to refrain from appropriating water otherwise physically available until the senior water right is satisfied.

21. "Cfs" means cubic feet per second.

22. "Change in Use" means an authorized change in the point of diversion, the place of use, the period of use, the purpose of use, or the place of storage of an Appropriation Right issued by the Water Management Board under this Compact and the Law of Administration, or of an Existing Use. A changed water right retains the original priority date of that right.

23. "Compact" means this water rights settlement entered into by the Confederated Salish and Kootenai Tribes, the State and the United States.

24. "Compact Implementation Technical Team" or "CITT" means the entity established by this Compact to plan and advise the Project Operator on the implementation of FIIP Operational Improvements, Rehabilitation and Betterment, and Adaptive Management. The CITT duties and responsibilities are defined in more detail in Appendix 3.5.

25. "Compact Management Committee" or "CMC" means the entity described in Article IV.G.5 formed to provide policy and administrative oversight of the CITT.

26. "Court of Competent Jurisdiction" means a State or Tribal court that otherwise has jurisdiction over the matter so long as the parties to the dispute to be submitted to that court consent to its exercise of jurisdiction, but if no such court exists, a Federal court.

27. "DNRC" means the Montana Department of Natural Resources and Conservation, or any successor agency.

28. "Effective Date" means the date on which the Compact is finally approved by the Tribes, by the State, and by the United States, and on which the Law of Administration has been enacted and taken effect as the law

of the State and the Tribes, whichever date is latest.

29. "Existing Use" means a use of water under color of Tribal, State or Federal law in existence as of the Effective Date, including uses in existence on that date that are eligible for either of the registration processes set forth in the Law of Administration; provided that any portion of a Water Right Arising Under State Law within the Reservation that is, at any point after the date the ratification of the Compact by the Montana Legislature takes effect under State law, voluntarily relinquished or is legally determined to be abandoned, relinquished, or have otherwise ceased to exist, shall be stricken from the relevant basin decree as a Water Right Arising Under State Law and be entitled to no further protection as such a right or as an Existing Use.

30. "Flathead Indian Irrigation Project" or "FIIP" means the irrigation project developed by the United States to irrigate lands within the Reservation pursuant to the Act of April 23, 1904, Public Law 58-159, 33 Stat. 302 (1904), and the Act of May 29, 1908, Public Law 60-156, 35 Stat. 441 (1908), and includes, but is not limited to, all lands, reservoirs, easements, rights-of-way, canals, ditches, laterals, or any other FIIP facilities (whether situated on or off the Reservation), headgates, pipelines, pumps, buildings, heavy equipment, vehicles, supplies, records or copies of records and all other physical, tangible objects, whether of real or personal property, used in the management and operation of the FIIP.

31. "FIIP Influence Area" means the lands influenced by the operations of the FIIP as identified on the map attached hereto as Appendix 2.

32. "FIIP Water Use Right" means the water right set forth in Article III.C.1.a that is dedicated to use by the FIIP and FIIP irrigators and includes uses of water for irrigation and Incidental Purposes allowed by the FIIP through water service contracts. This water right is the source for the entitlement to delivery of available irrigation water for assessed parcels as provided by Article IV.D.2.

33. "Flathead Indian Reservation" or "Reservation" means all land within the exterior boundaries of the Indian Reservation established under the July 16, 1855 Treaty of Hellgate (12 Stat. 975), notwithstanding the issuance of any patent, and including rights-of-way running through the Reservation.

34. "Flathead Reservation Water Management Board," "Water Management Board," or "Board" means the entity established by this Compact and the Law of Administration to administer the use of all water rights on the Reservation upon the Effective Date.

35. "Flathead System Compact Water" means that portion of the Tribal Water Right consisting of 229,383 Acre-feet per year that the Tribes may withdraw from the Flathead River or Flathead Lake, which includes up to 90,000 Acre-feet per year stored in Hungry Horse Reservoir, with a maximum total volume consumed of 128,158

Acre-feet per year.

36. "Historic Farm Deliveries" means the aggregate annual volume of water for irrigation and Incidental Purposes on the FIIP that was delivered to all farm turnouts within an individual River Diversion Allowance Area prior to the date the ratification of the Compact by the Montana Legislature takes effect under State law. Historic Farm Deliveries include historic crop consumption and estimated standard rates of on-farm conveyance and irrigation application inefficiencies and are used to evaluate RDA values pursuant to Article IV.D.1.e. Historic Farm Delivery volumes are specified in Appendix 3.3.

37. "Groundwater" means any water that is beneath the surface of the earth.

38. "High Mountain Lakes" means those lakes shown in Appendix 17.

39. "Hungry Horse Dam" means the dam that is a part of the Hungry Horse Project.

40. "Hungry Horse Project" means that project authorized by the Act of June 5, 1944 (58 Stat. 270, Public Law 78-329) to be constructed and operated by the US Bureau of Reclamation. The Act of May 29, 1958 (Public Law 85-428) amended the authorizing act to make Hungry Horse a Reclamation project subject to Reclamation laws.

41. "Hungry Horse Reservoir" means the reservoir that is a part of the Hungry Horse Project.

42. "Incidental Purpose(s)" means water delivered through or diverted from FIIP facilities for purposes incidental to irrigation, including but not limited to Rehabilitation and Betterment, and lawn and garden purposes allowed by the FIIP through water service contracts.

43. "Individual Indian Owner" means a Tribal member and his or her heirs or an Allottee and his or her heirs who is an owner of an interest in trust or restricted lands and who has a documented use of the Tribal Water Right registered pursuant to the terms of this Compact and the Law of Administration.

44. "Instream Flow" means a stream flow retained in a watercourse to benefit the aquatic environment. Instream Flow may include Natural Flow or streamflow affected by regulation, diversion, or other modification. A water right for Instream Flow purposes is quantified for a stream reach and measured for enforcement purposes at a specified point.

45. "Law of Administration" or "Unitary Administration and Management Ordinance" means the body of laws enacted by both the State and the Tribes to provide for the administration of surface water and Groundwater within the Reservation, that are both materially consistent with the substantive provisions of Appendix 4.

46. "Lease" means, as applied to the Tribal Water Right, an authorization for a Person or Persons to use any part of the Tribal Water Right through a service contract, temporary assignment, or other similar agreement

of limited duration.

47. "MFWP" means the Montana Department of Fish, Wildlife, and Parks, or any successor agency.

48. "Minimum Enforceable Instream Flows" or "MEFs" means the schedule of monthly minimum enforceable streamflow levels that are set forth in Appendix 3.1.

49. "Minimum Reservoir Pool Elevations" means the minimum pool water elevations for FIIP reservoirs specified in the table attached hereto as Appendix 3.1 and abstracts of water right attached hereto as Appendix 15.

50. "Natural Flow" means the rate and volume of water movement past a specified point on a natural stream, produced from a drainage area for which there have been no effects caused by diversion, storage, import, export, return flow, or changes in consumptive use.

51. "New Development" means the development of a use of the Tribal Water Right set forth in the Compact, from any source, commencing after the Effective Date, and encompasses all uses of the Tribal Water Right not included within the definition of Existing Use.

52. "Operational Improvements" means practices that improve the ability of the Project Operator to plan for and manage water storage and allocation between Instream Flows and FIIP Water Use Rights. Operational Improvements address water supply planning, reservoir management, Instream Flow management, water accounting and reporting, Stock Water delivery, irrigation wastewater, measurement at diversion works, water measurement at farm delivery locations, and water measurement at irrigation wasteways. Operational Improvements are set forth in the schedule attached hereto as Appendix 3.4.

53. "Parties" means the Tribes, the State, and the United States.

54. "Person" means an individual or any other entity, public or private, including the Tribes, the State, and the United States, and all officers, agents and departments of each sovereign.

55. "Project Operator" means the entity with the legal authority and responsibility to operate the Flathead Indian Irrigation Project.

56. "Reallocated Water" means the water from that portion of any given FIIP diversion or RDA that is made available through increased efficiency resulting from Rehabilitation and Betterment projects.

57. "Rehabilitation and Betterment" means both irrigation facility upgrades that improve water management and operational control at irrigation diversion works, and irrigation facility upgrades to reduce losses in conveyance of water from irrigation sources of supply to irrigation points of use. Rehabilitation and Betterment actions include, but are not limited to, reconstruction, replacement, and automation at irrigation diversion works;

lining of open canals; and placement of open canals in pipe.

58. "River Diversion Allowance" or "RDA" means initially the volume of water identified in Appendix 3.2 and defined for wet, normal and dry Natural Flow years that is necessary to be diverted or pumped to supply the FIIP Water Use Right. As Reallocated Water is made available through Rehabilitation and Betterment, the RDA is the amount defined in Appendix 3.2, reduced by the volume of Reallocated Water made available by a particular Rehabilitation and Betterment project.

59. "River Diversion Allowance Area" or "RDA Area" means geographic divisions of the FIIP to which water is diverted. RDA Areas are depicted in Appendix 3.2.

60. "Secretary" means the Secretary of the United States Department of the Interior, or the Secretary's duly authorized representative.

61. "Shared Shortages" means a water management procedure to be applied when water supply is insufficient to satisfy both MEFs and RDAs simultaneously.

62. "State" means the State of Montana and all officers, agencies, departments and political subdivisions thereof.

63. "Stock Water" means water used for livestock.

64. "Target Instream Flows" or "TIFs" means the schedule of monthly Instream Flow levels, defined for normal and wet Natural Flow years that are identified in Appendix 3.1.

65. "Tribal Council" means the duly elected governing body of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana.

66. "Tribal Natural Resources Department" means the governmental subdivision of the Tribes authorized by Tribal Ordinance No. 78-B, as amended, or any successor agency.

67. "Tribal Water Right" means the water rights of the Confederated Salish and Kootenai Tribes, including any Tribal member or Allottee, the basis of which are federal law, as set forth in Article III.A, Article III.C.1.a through j, Article III.C.1.k.i, Article III.C.1.l.i, Article III.D.1 through 3 and Article III.D.7 and 8. The term "Tribal Water Right" also includes those rights identified in Article III.H that are appurtenant to lands taken into trust by the United States on behalf of the Tribes.

68. "Tribes" means the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, and all officers, agencies, and departments thereof.

69. "United States" means the Federal government and all officers, agencies and departments thereof.

70. "Water Rights Arising Under State Law" means those valid water rights Arising Under State Law

existing as of the Effective Date and not subsequently relinquished or abandoned, as those rights are: decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permitted by the DNRC; exempted from filing in the Montana general stream adjudication pursuant to 85-2-222, MCA; or excepted from the permitting process pursuant to 85-2-306, MCA.

71. "Wetland" means an area that is inundated or saturated by surface water or Groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

ARTICLE III -WATER RIGHTS OF THE TRIBES

The water rights of the Tribes quantified in Article III are composed of two parts: water rights whose basis is Federal law that are defined and referred to as the Tribal Water Right and those Water Rights Arising Under State Law identified in Article III.C.1.k.ii, III.C.1.l.ii, III.D.4, 5, and 6, and III.H.

A. Religious or Cultural Uses. The Tribal Water Right described in this Article III includes all traditional, religious, or cultural uses of water by members of the Confederated Salish and Kootenai Tribes within Montana. Individual exercises of traditional, religious, or cultural uses are exempt from the Registration process contained in the Law of Administration.

B. Abstracts of Water Right. Abstracts of water right appended to this Compact are a substantive element of this Compact. The language of the abstracts, including all informational remarks, shall control in the event of any inconsistency between the Compact and the abstracts of water right; provided however, that the Parties upon written mutual agreement may make technical corrections to the abstracts prior to the Parties submission to the Montana Water Court of the motion for entry of the Proposed Decree identified in Article VII.B. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

C. Basins 76L and 76 LJ and Flathead Indian Irrigation Project Irrigation Water Diversions from Basins 76F and 76N.

1. Quantification.

a. Flathead Indian Irrigation Project. The Tribes have the right to water that is supplied to the Flathead Indian Irrigation Project to be used for such purposes in such volumes and flow rates and from such sources of supply as identified in the abstracts of water right attached hereto as Appendix 5. The FIIP will serve up to, but not more than 135,000 acres. The exercise of this portion of the Tribal Water Right shall be satisfied by meeting the RDA values for each RDA Area described in Appendix 3.2 as evaluated pursuant to Article IV.D.1.e, and is

subject to Article IV.D through F.

The priority date for the portion of the Tribal Water Right used by the FIIP is July 16, 1855.

b. Existing Uses by the Tribes, their Members and Allottees.

i. The Tribal Water Right includes all Existing Uses by the Tribes, their members and Allottees that are not Water Rights Arising Under State Law and are not otherwise specifically quantified in other sections of this Article III.

ii. Water Rights Arising Under State Law held by the Tribes, their members and Allottees will be satisfied pursuant to their own terms as finally decreed by the Montana Water Court or permitted by the DNRC.

iii. For each Existing Use identified in Article III.C.1.b.i to be valid and enforceable, the Tribes, or each Tribal member or Allottee claiming such an Existing Use, shall complete the process for the registration of uses of the Tribal Water Right set forth in the Law of Administration. Such uses include but are not limited to irrigation, Stock Water, domestic, commercial, municipal and industrial purposes, as well as those historically irrigated allotments that are held for individuals in trust by the United States that are not served by the FIIP and that are identified on the map and table attached hereto as Appendix 6.

iv. Uses of the Tribal Water Right for which abstracts are appended to this Compact, including uses on the FIIP, are exempt from the registration requirement set forth in Article III.C.1.b.iii.

v. The priority date for water uses registered pursuant to Article III.C.1.b.iii and the Law of Administration is July 16, 1855.

c. Flathead System Compact Water. The Tribes have a direct flow water right from the Flathead River with the following elements:

Source of Water: Flathead River, Flathead Lake, and the South Fork of the Flathead River up to Hungry Horse Reservoir

Point of Diversion: From Flathead Lake or the Flathead River, either on or off of the Reservation

Purpose: Any beneficial use

Diversion Volume: 229,383 Acre-feet per year

Depletion Volume: 128,158 Acre-feet per year

Period of Diversion and Depletion: January 1 through December 31

i. As part of the Tribal Water Right quantified in this Article III.C.1.c, the Tribes shall be entitled to an allocation of 90,000 Acre-feet per year, as measured at the Hungry Horse Dam, of storage water in Hungry Horse Reservoir.

ii. This water right shall be used in a manner that ensures impacts associated with the exercise of this water right are no greater than those identified in model run: Natural Q + 90K of the United States Bureau of Reclamation's Final Flathead Basin Depletions Study (USBR, October 2012), attached hereto as Appendix 7. In the event that the impacts exceed those identified in model run: Natural Q + 90K of the United States Bureau of Reclamation's Final Flathead Basin Depletions Study, the use of the water right set forth in this Article III.C.1.c shall be reduced in such amounts as are necessary to immediately achieve impacts that are no greater than those identified in model run: Natural Q + 90K of the United States Bureau of Reclamation's Final Flathead Basin Depletions Study.

iii. The releases of the stored water identified in Article III.C.1.c.i shall be limited in accordance with the "Biological Impact Evaluation and Operational Constraints for a proposed 90,000 Acre-foot withdrawal" (State of Montana, September 14, 2011) attached hereto as Appendix 8. The Parties upon mutual written agreement, and in conformance with other applicable provisions of law including but not limited to the Endangered Species Act of 1973, 16 U.S.C. 1531, et seq. (ESA), may amend the Biological Impact Evaluation Constraints identified in the September 14, 2011 report. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

iv. The exercise of this water right shall conform with the minimum instream flow schedules, as measured at the USGS gaging station on the Flathead River at Columbia Falls (12363000) and the USGS gaging station on the Flathead River at Polson (12372000) as identified in Tables 3 through 6 of Appendix 7, as well as the minimum flow requirements set forth in Table 5 that must also be met downstream at the USGS gaging station on the Flathead River at Perma (123887000). The exercise of this water right shall also conform to the ramping rates, as measured below Kerr and Hungry Horse Dams, and identified in Tables 3 through 6 of Appendix 7. In the event that the minimum instream flow schedules or ramping rates are not met, the use of the water right set forth in this Article III.C.1.c shall be suspended until such time as those minimum instream flow schedules and ramping rates are achieved. The Parties upon mutual written agreement, and in conformance with applicable ESA and Federal Energy Regulatory Commission licensing requirements for the three previously identified sites, may amend the limitations for releases from Hungry Horse Reservoir that are required to conform with minimum instream flow and ramping rate schedules at these sites. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

v. The exercise of this water right shall also conform with the Flathead Lake filling criteria identified on page 12 of Appendix 7.

vi. The Tribes may use any amount of the stored water identified in Article III.C.1.c.i that is not necessary to be released each year pursuant to the provisions of Article III.C.1.c.ii through v, for any beneficial purpose, subject to the terms and conditions of this Compact.

vii. Use of the 90,000 Acre-feet of water from Hungry Horse Reservoir is subject to the approval of, and any terms and conditions specified by, Congress.

viii. The priority date for Flathead System Compact Water is July 16, 1855.

ix. Any development by the Tribes of this Flathead System Compact Water Right outside the boundaries of the Reservation shall be pursuant to Article IV.B.5.c.

x. The Parties agree that nothing in this Compact precludes the Tribes from leasing Flathead System Compact Water to FIIP irrigators.

xi. The abstract of water right for this Flathead System Compact Water Right is attached hereto as Appendix 9.

d. Instream Flow Rights on Reservation.

i. Natural Instream Flows. The Tribes have Instream Flow rights in the quantities and locations identified in the abstracts of water right attached hereto as Appendix 10.

ii. FIIP Instream Flows. The Tribes have Instream Flow rights in the quantities and locations identified in the abstracts of water right attached hereto as Appendix 11. The exercise of this portion of the Tribal Water Right is subject to Article IV.C through F.

iii. Other Instream Flows. The Tribes have Instream Flow rights in the quantities and locations identified in the abstracts of water right attached hereto as Appendix 12. The Parties agree that a right identified in Appendix 12 shall only become enforceable on the date that an enforceable flow schedule for that right has been established pursuant to the process set forth in the Law of Administration, Section 2-1-115 of this Ordinance, for the development of such enforceable schedules.

iv. Interim Instream Flows. Until such time as the Instream Flow water rights set forth in Article III.C.1.d.ii become enforceable pursuant to Article IV.C, the Tribes shall be entitled to enforce the interim Instream Flows contained in Appendix 13 consistent with the provisions in Article IV.C and IV.E. The Tribes and the United States shall enforce these interim Instream Flows pursuant to Appendix 13 or existing practice as of December 31, 2014, and as described in the protocols in Appendix 14.

v. The priority date for the Instream Flow water rights set forth in this Article III.C.1.d is time immemorial.

e. Minimum Reservoir Pool Elevations in Flathead Indian Irrigation Project Reservoirs.

i. The Tribes have the right to water necessary to maintain Minimum Reservoir Pool Elevations for FIIP reservoirs in the quantities and locations set forth in the table and abstracts of water right attached hereto as Appendix 15. The exercise of this portion of the Tribal Water Right is subject to Article IV.C and E and superseding Federal law allowing for regulation of reservoir elevations.

ii. The Minimum Reservoir Pool Elevations will become enforceable according to the schedule attached hereto as Appendix 3.4.

iii. The priority date for the water rights set forth in this Article III.C.1.e is July 16, 1855.

iv. Until such time as the Minimum Reservoir Pool Elevations set forth in Article III.C.1.e become enforceable pursuant to Article IV.C, the Tribes shall be entitled to enforce those interim reservoir pool elevations identified in Appendix 13. The Tribes and the United States shall enforce these interim reservoir pool elevations only pursuant to Appendix 13 or existing practice as of December 31, 2014, and subject to superseding Federal law allowing for regulation of reservoir elevations.

f. Wetland Water Right. The Tribes have the right to all naturally occurring water necessary to maintain the Wetlands identified in the abstracts of water right attached hereto as Appendix 16. The priority date for the Wetland water rights set forth in this Article III.C.1.f is time immemorial.

g. High Mountain Lakes Water Right. The Tribes have the right to all naturally occurring water necessary to maintain the High Mountain Lakes identified in the abstracts of water right attached hereto as Appendix 17. The priority date for the High Mountain Lakes water rights set forth in this Article III.C.1.g is time immemorial.

h. Flathead Lake. The Tribes have the right to all naturally occurring water necessary to maintain the level of the entirety of Flathead Lake at an elevation of 2,883 feet as described in the abstract of water right attached hereto as Appendix 18. The priority date for the Flathead Lake water right set forth in this Article III.C.1.h is time immemorial.

i. Boulder Creek Hydroelectric Project. The Tribes have the right to water necessary to operate the Boulder Creek Hydroelectric Project as identified in the abstracts of water right attached hereto as Appendix 19. The priority date for the Boulder Creek Hydroelectric Project water right set forth in this Article III.C.1.i is July 16, 1855.

j. Hellroaring Hydroelectric Project. The Tribes have the right to water necessary to operate the Hellroaring Hydroelectric Project as identified in the abstracts of water right attached hereto as Appendix 20. The priority date for the Hellroaring Hydroelectric Project water right set forth in this Article III.C.1.j is July 16, 1855.

k. Wetlands Appurtenant to Lands Owned by Montana Fish Wildlife and Parks.

i. The Tribes and Montana Fish Wildlife and Parks (MFWP) have the right to all naturally occurring water necessary to maintain the Wetlands identified in the abstracts of water right attached hereto as Appendix 21. The priority date for Wetland water rights appurtenant to lands owned by MFWP is time immemorial.

ii. Upon the Effective Date, the Tribes shall be added as a co-owner with MFWP of water right number 76L 153988-00, the abstract of which is attached hereto as Appendix 22. MFWP shall make reasonable efforts to defend this right in the Montana general stream adjudication. The Tribes have the right but not the duty to participate in the defense of this right in the Montana general stream adjudication.

iii. The Tribes shall be added in an expeditious manner as a co-owner to any water right with a fish or fish and wildlife purpose that is appurtenant to land acquired by MFWP on the Reservation after the Effective Date.

iv. The Tribes shall be added in an expeditious manner as a co-owner to any Wetlands water right acquired by MFWP pursuant to the Law of Administration after the Effective Date.

v. MFWP shall be the sole entity entitled to manage the water rights identified in Article III.C.1.k. The recognition of these co-owned water rights does not confer on the Tribes any authority over the management of the MFWP-owned lands to which these water rights are appurtenant.

vi. MFWP shall meet and confer with the Tribes on a biennial basis, or on such other timeframe as the Tribes and MFWP may mutually agree, to discuss the exercise of these water rights. Such modifications to the meeting schedule are pursuant to, and shall not be deemed an amendment of, this Compact.

l. Wetlands Appurtenant to Lands Owned by Department of Interior Fish and Wildlife Service.

i. The Tribes and the Department of the Interior's Fish and Wildlife Service (FWS) have the right to all naturally occurring water necessary to maintain the Wetlands identified in the abstracts of water right attached hereto as Appendix 23. The priority date for Wetland water rights appurtenant to lands owned by FWS is time immemorial.

ii. Upon the Effective Date, the Tribes shall be added as a co-owner with FWS of water right numbers 76L 99338 00, 76L 99339 00, and 76L 99340 00, the abstracts of which are attached hereto as Appendix 24. FWS shall make reasonable efforts to defend these rights in the Montana general stream adjudication. The Tribes have the right but not the duty to participate in the defense of these rights in the Montana general stream adjudication.

iii. The Tribes shall be added in an expeditious manner as a co-owner to any water right with a fish or fish and wildlife purpose that is appurtenant to land acquired by FWS on the Reservation after the Effective Date.

iv. The Tribes shall be added in an expeditious manner as a co-owner to any Wetlands water right

acquired by FWS pursuant to the Law of Administration, after the Effective Date.

v. FWS shall be the sole entity entitled to manage the water rights identified in this Article III.C.1.l. The recognition of these co-owned water rights does not confer on the Tribes any authority over the management of the FWS-owned lands to which these water rights are appurtenant.

vi. FWS shall meet and confer with the Tribes on a biennial basis, or on such other timeframe as the Tribes and FWS may mutually agree, to discuss the exercise of these water rights. Such modifications to the meeting schedule are pursuant to, and shall not be deemed an amendment of, this Compact.

D. Instream Flow Water Rights Off of the Reservation.

1. Mainstem Instream Flow Right in the Kootenai River (Basin 76D). The Tribes have an Instream Flow water right for the mainstem of the Kootenai River for the reach and with the associated flow rates set forth in the abstract of water right attached hereto as Appendix 25. The measurement point for this water right is USGS streamflow gage #12305000 located at Leonia, Idaho.

a. The priority date for this water right is time immemorial.

b. The period of use of this water right is January 1 to December 31 of each year.

c. The purpose of this water right is for the maintenance and enhancement of fish habitat to benefit the instream fishery. This right shall not be changed to any other or additional purpose, changed to consumptive use, or transferred to different ownership.

d. The point of diversion and place of use for this water right is instream. This water right shall not be exercised in conjunction with any artificial diversion.

e. The ability to enforce this right shall be suspended so long as Libby Dam remains in existence and the Army Corps of Engineers' operations of that dam are conducted consistently with the 2008 Federal Columbia River Power System Biological Opinion, the 2010 updated Biological Opinion, and the 2014 Supplemental Federal Columbia River Power System Biological Opinion, specifically as described in Reasonable and Prudent Alternative Action (RPA) No. 4 (Storage Project Operations), Table No. 1 (Libby Dam), including the Northwest Power and Conservation Council's 2003 mainstem amendments to the Columbia River Basin Fish and Wildlife Program, or any subsequent Biological Opinion(s) governing the same RPAs and Operations.

f. In the event of changes to the U.S. Army Corps of Engineers' (Corps) responsibilities under the ESA, such as the delisting of resident and anadromous fish species, that no longer require the Corps to operate Libby Dam pursuant to ESA section 7 biological opinions or other substantive ESA requirements, the United States, acting through the Corps, the Tribes, and the State shall establish written protocols and understandings on

meeting and enforcing the Tribes' mainstem Instream Flow right in the Kootenai River while also ensuring that the Corps' operations of Libby Dam meet all Federal statutory and regulatory requirements and obligations. Provided however, that any such enforcement protocol shall not alter the limitations on Call set forth in Article III.D.1.g. The establishment of such protocols and understandings are pursuant to, and shall not be deemed an amendment of, this Compact.

g. Should the suspension on enforcement set forth in Article III.D.1.e be lifted due to the removal of Libby Dam, this water right may be exercised to make a Call only against junior users whose point of diversion is from the mainstem of the Kootenai River and not its tributaries, the purpose of whose rights is irrigation and whose source of supply is surface water, or against junior users the purpose of whose rights is irrigation, whose source of supply is Groundwater that is connected to the mainstem of the Kootenai River, and whose flow rate is greater than 100 gallons per minute.

h. Call may be made only when the average daily flow drops below the enforceable level for the previous 24-hour period.

2. Mainstem Instream Flow Right in the Swan River (Basin 76K). The Tribes have an Instream Flow water right for the reach of the mainstem of the Swan River with the associated flow rates set forth in the abstract of water right attached hereto as Appendix 26. The measurement point for this water right is USGS streamflow gage #12370000 located immediately below Swan Lake near Big Fork, Montana.

a. The priority date for this water right is time immemorial.

b. The period of use of this water right is January 1 to December 31 of each year.

c. The purpose of this water right is for the maintenance and enhancement of fish habitat to benefit the instream fishery. This right shall not be changed to any other or additional purpose, changed to consumptive use, or transferred to different ownership.

d. The point of diversion and place of use for this water right is instream. This water right shall not be exercised in conjunction with any artificial diversion.

e. The Tribes, and/or the United States on behalf of the Tribes, shall be entitled to make a Call to enforce this water right only against junior users the purpose of whose rights is irrigation and whose source of supply is surface water, or against junior users the purpose of whose rights is irrigation, whose source of supply is Groundwater connected to surface sources in Basin 76K and whose flow rate is greater than 100 gallons per minute.

f. Call may be made only when the average daily flow drops below the enforceable level for the previous

24-hour period.

3. Mainstem Instream Flow Right in the Lower Clark Fork River (Basins 76M and 76N). The Tribes have a 5000 cfs Instream Flow water right for the reach of the mainstem of the Clark Fork River as set forth in the abstract of water right attached hereto as Appendix 27. The measurement point for this water right is USGS streamflow gage #12391950 located immediately below Cabinet Gorge Dam in Idaho.

a. The priority date for this water right is time immemorial.

b. The period of use of this water right is January 1 to December 31 of each year.

c. The purpose of this water right is for the maintenance and enhancement of fish habitat to benefit the instream fishery. This right shall not be changed to any other or additional purpose, changed to consumptive use, or transferred to different ownership.

d. The point of diversion and place of use for this water right is instream. This water right shall not be exercised in conjunction with any artificial diversion.

e. The Tribes, and/or the United States on behalf of the Tribes, shall be entitled to make a Call to enforce this water right only against junior users whose point of diversion is from the mainstem of the Clark Fork River and not its tributaries, the purpose of whose rights is irrigation and whose source of supply is surface water, or against junior users the purpose of whose rights is irrigation, whose source of supply is Groundwater connected to the mainstem of the Clark Fork River and whose flow rate is greater than 100 gallons per minute.

f. Call may be made only when the average daily flow drops below the enforceable level for the previous 24-hour period.

g. For so long as the Cabinet Gorge and Noxon Dams remain in existence, the enforceable level of this right is a flow rate equal to the lesser of 5000 cfs or the minimum flow level established by the FERC as a condition on the license for the Cabinet Gorge and Noxon Dams as that license condition may be modified over time.

4. Co-ownership of Instream and Public Recreation Water Rights Held by MFWP.

a. Upon the Effective Date, the Tribes shall be added as a co-owner with MFWP of the Water Rights Arising Under State Law held by MFWP for Instream Flow and recreation purposes that are identified on the tables attached hereto as Appendix 28 and Appendix 29. Nothing in this co-ownership changes any of the other elements of these Water Rights Arising Under State Law, including their priority dates or flow rates.

i. The Water Rights Arising Under State Law identified in Appendix 28 shall be included as part of the proposed decree to be filed with the Montana Water Court pursuant to Article VII.B.1.

ii. The Water Rights Arising Under State Law identified in Appendix 29 shall proceed through the Montana general stream adjudication as though they were not included in this Compact. MFWP shall make reasonable efforts to defend each of these rights identified in Appendix 29 in the Montana general stream adjudication. The Tribes have the right but not the duty to participate in the defense of these rights in the Montana general stream adjudication.

b. As co-owners, the Tribes and MFWP shall meet and confer on a biennial basis, or on such other timeframe as the Tribes and MFWP may mutually agree, to discuss the exercise of the rights identified in Article III.D.4.a, with a goal of establishing a joint plan for the exercise of these rights. Notwithstanding this planning process, the Tribes and MFWP each retain(s) the unilateral right to exercise each water right identified in Article III.D.4.a as each deem(s) appropriate, but neither the Tribes nor MFWP has any affirmative duty to take any particular action in regard to the exercise of any of these rights.

5. Co-ownership of Water Right Number 76M 94404-00 (Milltown Dam) in Basin 76G (Upper Clark Fork).

a. Upon the date the ratification of this Compact by the Montana Legislature becomes effective under State law, Water Right Arising Under State Law number 76M 94404-00 is changed as follows: the right is split into two separate active and enforceable Water Rights Arising Under State Law, 76M 94404-01 and 76M 94404-02, and the original water right elements are changed to support the maintenance and enhancement of fish habitat and take the form of two enforceable hydrographs. The elements of the changed and split water right are set forth in the two water rights abstracts attached hereto as Appendix 30. The measurement point for 76M 94404-01 is the USGS gage #12334550 at Turah, Montana, and the measurement point for 76M 94404-02 is the USGS gage #1234000 at Bonner, Montana.

i. The period of use of these water rights is January 1 to December 31 of each year.

ii. The point of diversion and place of use for these water rights is instream.

iii. These water rights shall not be exercised in conjunction with any artificial diversion.

iv. MFWP, and the Tribes after they become co-owners, and subject to the limitation on enforcement set forth in Article III.D.5.c, shall be entitled to make a Call to enforce these water rights only against junior users the purpose of whose rights is irrigation and whose source of supply is surface water, or against junior users the purpose of whose rights is irrigation, whose source of supply is Groundwater and whose flow rate is greater than 100 gallons per minute.

v. The enforceable levels of these water rights are identified in the table attached hereto as Appendix 31. The minimum enforceable level of this right is 700 cfs at the location of USGS gage #1234000 at Bonner, and

500 cfs at the location of USGS gage #12334550 at Turah.

vi. Call may be initiated on the day following a five-consecutive-day-period in which four out of five average daily river flows fall below their respective daily enforceable hydrograph values. Call may persist until such time as two average daily flows of the previous five-consecutive-day-period are in excess of their respective enforceable hydrograph values.

b. Upon the Effective Date, the Tribes shall be a co-owner with MFWP of these water rights. As co-owners, the Tribes and MFWP shall meet and confer on a biennial basis, or on such other timeframe as the Tribes and MFWP may mutually agree to, regarding the exercise of these rights, with a goal of establishing a joint plan for the exercise of these rights. The establishment of such a plan is pursuant to, and shall not be deemed an amendment of, this Compact. Notwithstanding this planning process, the Tribes and MFWP each retains the unilateral right to exercise these water rights as each deems appropriate, but neither the Tribes nor MFWP has any affirmative duty to take any particular action in regard to the exercise of these rights.

c. The ability to enforce these rights shall be suspended for a period of 10 years from the date the ratification of this Compact by the Montana Legislature becomes effective under State law. During and after this period, the Tribes and MFWP shall engage with other stakeholders in the Upper Clark Fork Basin on water management subjects including, but not limited to, drought planning and the exercise of these water rights in conjunction with the other water rights in the Upper Clark Fork Basin.

d. For any analysis of the legal availability of water in the Upper Clark Fork Basin, these rights shall be considered to have a combined year-round flow rate of 2,000 cfs as measured at the location of USGS gauge #12340500 below the confluence of the Blackfoot and Clark Fork Rivers.

e. No owner of these water rights, acting independently or jointly, shall be entitled to lease, sell or change the purpose of these water rights.

f. The Water Rights Arising Under State Law identified in this Article III.D.5 shall be finally decreed as part of the decree of this Compact that will be proposed to the Montana Water Court pursuant to Article VII.B.1.

6. Contract Rights to Stored Water Held by MFWP in Basin 76H (Bitterroot).

a. MFWP is a party to two contracts for the delivery of stored water from Painted Rocks Reservoir: MFWP Water Purchase Contract Painted Rocks, between MFWP and DNRC, July 12, 2004 (attached hereto as Appendix 32); and Water Purchase Contract, March 5, 1958, as amended on March 5, 1958 (attached hereto as Appendix 33). In the event that MFWP obtains an ownership interest in any water rights pursuant to these contracts or obtains an ownership interest in any water rights pursuant to any future contract for the delivery of

water from Painted Rocks Reservoir, MFWP shall expeditiously take all steps necessary to add the Tribes as a co-owner of said water rights.

b. MFWP is a party to a contract for the delivery of stored water from Lake Como: Agreement Between the Bitterroot Irrigation District and the United States Department of the Interior, Bureau of Reclamation for the Operation of the Enlarged Storage Pool at Lake Como, July, 1994 (attached hereto as Appendix 34). In the event that MFWP obtains an ownership interest in any water rights pursuant to this contract, or obtains an ownership interest in any water rights pursuant to any future contract for delivery of water from Lake Como, MFWP shall expeditiously take all steps necessary to add the Tribes as a co-owner of said water rights.

c. MFWP shall manage the Painted Rocks and Como contract rights, in a prudent, biologically based and environmentally sound manner, and within the terms and conditions of these contracts. MFWP will manage in the same manner any future contracts for the delivery of water from Painted Rocks or Lake Como to which MFWP becomes a party. The Tribes are an intended beneficiary of MFWP's management of these contracts, and have the right to challenge MFWP's management decisions in a Court of Competent Jurisdiction.

d. MFWP shall meet and confer with the Tribes on a biennial basis, or on such other timeframe as the Tribes and MFWP may mutually agree to, regarding the management of these contract rights. Such modifications to the meeting schedule are pursuant to, and shall not be deemed an amendment of, this Compact. If the Tribes become co-owners of any water right pursuant to this Article III.D.6 of the Compact, the Tribes and MFWP shall each retain the independent right to exercise each water right as each deems appropriate. Neither the Tribes nor MFWP has any affirmative duty to take any particular action in regard to the exercise of any of such rights. The Tribes do not assume any liability arising out of or resulting from any of the contracts identified in this Article III.D.6 pertaining to co-ownership of rights to stored water in Basin 76H.

7. Instream Flow Right on the North Fork of Placid Creek (Basin 76F). The Tribes have an Instream Flow water right for the upper reach of the North Fork of Placid Creek with the associated flow rates set forth in the abstract of water right attached hereto as Appendix 35. The measurement point for this water right shall be within the main channel of the North Fork of Placid Creek, below the North Fork Placid Creek FIIP Diversion located within the SE 1/4 of the NW 1/4 of the SE 1/4 of Section 29 in Township 17 North Range 16 West.

a. The priority date for this water right is time immemorial.

b. The period of use of this water right is January 1 to December 31 of each year.

c. The purpose of this water right is for the maintenance and enhancement of fish habitat to benefit the instream fishery. This right shall not be changed to any other or additional purpose, changed to consumptive use,

or transferred to different ownership.

d. The point of diversion and place of use for this water right is instream. This water right shall not be exercised in conjunction with any artificial diversion.

e. The Tribes, and/or the United States on behalf of the Tribes, shall be entitled to make a Call to enforce this water right only against junior users the purpose of whose rights is irrigation and whose source of supply is surface water of Placid Creek, or against junior users the purpose of whose rights is irrigation, whose source of supply is Groundwater connected to Placid Creek and whose flow rate is greater than 100 gallons per minute.

f. Call may be made only when the average daily flow drops below the enforceable level for the previous 24-hour period.

8. Instream Flow Rights on Kootenai River Tributaries (Basin 76D). The Tribes have Instream Flow water rights for the reaches of the Kootenai River tributaries Big Creek, Boulder Creek, Steep Creek and Sutton Creek, with the associated flow rates set forth in the abstracts of water right attached hereto as Appendix 36.

a. The priority date for this water right is time immemorial.

b. The period of use of this water right is January 1 to December 31 of each year.

c. The purpose of this water right is for the maintenance and enhancement of fish habitat to benefit the instream fishery. This right shall not be changed to any other or additional purpose, changed to consumptive use, or transferred to different ownership.

d. The point of diversion and place of use for this water right is instream. This water right shall not be exercised in conjunction with any artificial diversion.

e. Water rights held by the United States Forest Service pursuant to the United States Forest Service-Montana Water Rights Compact, 85-20-1401, MCA, shall not be subject to Call by the Tribes and/or the United States on behalf of the Tribes.

f. The recognition of the Instream Flow water rights in this Article III.D.8 does not confer on the Tribes any authority over the management of National Forest System lands within Basin 76D, or any claim to ownership or other rights in that land. With the exception of future diversionary uses by the United States on National Forest System lands in excess of the Forest Service's reserved rights identified in Article III.D.8.e, the Tribes hold the United States harmless for delivery of water or maintenance of flows to meet this Instream Flow water right in Basin 76D.

E. Period of Use. The period of use of the Tribal Water Right set forth in this Article III shall be January 1 to December 31 of each year, provided however, that any portion of that water right that is dedicated to

seasonal use, including irrigation use, shall have a period of use as set forth in the abstracts attached hereto as Appendix 5 or as set forth in the registration of such right pursuant to the Law of Administration, as applicable.

F. Points and Means of Diversion. The points and means of diversion for use of the Tribal Water Right set forth in this Article III are as set forth in the abstracts of water rights attached to this Compact or as may be provided for under the Law of Administration.

G. Call Protection.

1. Non-Irrigators. The Tribes, on behalf of themselves and the users of any portion of the Tribal Water Right set forth in this Compact, and the United States agree to relinquish their right to exercise the Tribal Water Right to make a Call against any Water Right Arising Under State Law whose purpose(s) do(es) not include irrigation.

2. Groundwater Irrigators with Flow Rates Less Than or Equal to 100 Gallons Per Minute. The Tribes, on behalf of themselves and the users of any portion of the Tribal Water Right set forth in this Compact and the United States agree to relinquish their right to exercise the Tribal Water Right to make a Call against any Water Right Arising Under State Law whose purpose is irrigation and whose source of supply is Groundwater and whose flow rate is less than or equal to 100 gallons per minute.

3. Irrigators Within the FIIP Influence Area.

a. The Tribes, the United States, and the Project Operator, agree to relinquish their right to exercise the Tribal Water Right to make a Call against that portion of any Water Right Arising Under State Law identified in Article III.G.3.b that is equal to the quantity of water established as the annual FIIP quota for the current irrigation season, or an equivalent farm delivery amount within the FIIP as implemented by the Project Operator within the applicable RDA Area, or the quantity allowed under a claim decreed by the Montana Water Court or water right granted by the DNRC (an Alternate Value), whichever is less, whose owner enters into a consensual agreement as described in this Article III.G.3.

b. Water Rights Arising Under State Law whose owners are eligible to enter into consensual agreements as described in this Article III.G.3 are those rights:

i. whose purpose is irrigation;

ii. whose point(s) of diversion or place(s) of use are within the FIIP Influence Area; and

iii. whose source of supply is surface water; or

iv. whose source of supply is Groundwater and whose flow rate is greater than 100 gallons per minute.

c. The Tribes, the United States, and the Project Operator, agree to enter into the consensual agreement

described in this Article III.G.3 with every owner of a Water Right Arising Under State Law described in Article III.G.3.b who wishes to enter into such an agreement. The following conditions shall apply to any such consensual agreement:

i. the owner of a Water Right Arising Under State Law that meets the criteria described in Article III.G.3.b shall measure all diversions, report the measured amount of those diversions to the Project Operator, agree to divert no more water each year than the lesser of the quantity established as the annual FIIP quota or an Alternate Value, and shall not expand water use beyond the terms of the agreement;

ii. the owner of a Water Right Arising Under State Law does not acquire any entitlement to any delivery or diversion of water from the FIIP, whether the water is stored or run of the river, by entering into a consensual agreement as described in this Article III.G.3;

iii. irrigation use pursuant to any Water Right Arising Under State Law whose owner enters into a consensual agreement as set forth in this Article III.G.3 shall be limited to the irrigation season identified annually by the FIIP and to such period of use limitation as may apply to FIIP irrigators;

iv. the method and frequency of measurement of the diversion must be described and occur at a reasonable level of accuracy and frequency to demonstrate that the diversion does not exceed the lesser of the annual FIIP quota for a given irrigation season or an Alternate Value, and;

v. the agreement is permanent and is binding on the heirs and assigns of the owner of each Water Right Arising Under State Law who enters into such agreement.

d. The entering into a consensual agreement as set forth in this subsection (3) does not relieve the owner of any claim to a Water Right Arising Under State Law that is at issue in the Montana general stream adjudication from the obligation of prosecuting that water right claim through the Montana general stream adjudication.

e. If a consensual agreement is entered into among the Tribes, United States, the Project Operator and the owner of a Water Right Arising Under State Law described in Article III.G.3.b prior to the issuance of the final decree for Montana Water Court Basin 76L and 76 LJ, as applicable, that agreement shall terminate as a matter of law if the claimed Water Right is terminated as a result of proceedings conducted in the Montana general stream adjudication.

f. If a consensual agreement is entered into among the Tribes, the United States, the Project Operator, and the owner of a Water Right Arising Under State Law described in Article III.G.3.b prior to the issuance of the final decree for Montana Water Court Basin 76L and 76 LJ, as applicable, and such owner has a claim in the Montana general stream adjudication that is ultimately decreed a quantity of water for that claim less than the

quantity established in the agreement, the consensual agreement shall protect only the lesser amount of water.

g. If the owner of a Water Right Arising Under State Law described in Article III.G.3.b ceases to use that portion of that water right in excess of the lesser of the annual FIIP quota for a given irrigation season, or an Alternate Value, pursuant to a consensual agreement as set forth in Article III.G.3:

i. that nonuse does not represent an intent by the owner of that water right to wholly or partially abandon that water right or to not comply with the terms and conditions of that right; and

ii. the period of nonuse may not create or may not be added to any previous period of nonuse to create a presumption of abandonment.

h. Any use of a Water Right Arising Under State Law subject to a consensual agreement described in this Article III.G.3 exceeding the volume of water specified in the consensual agreement shall be subject to Call by the Tribes, the United States, or the Project Operator for that amount of water in excess of the terms of the consensual agreement.

i. A Person who has both an entitlement to the delivery of water from the FIIP and a Water Right Arising Under State Law to serve the same acreage may only protect from Call, by entering into a consensual agreement pursuant to this Article III.G.3, a total quantity of water equal to the lesser of the annual FIIP quota for a given irrigation season, or an Alternate Value, for each acre served, irrespective of whether the water applied to each acre is pursuant to that Person's FIIP delivery right or that Person's Water Right Arising Under State Law.

4. Water Rights Upstream of the Reservation (Basins 76I, 76J, and 76LJ). The Tribes, on behalf of themselves and the users of any portion of the Tribal Water Right set forth in this Compact, and the United States agree to relinquish their right to exercise the Tribal Water Right to make a Call against any water right located upstream of the Flathead Reservation in Basins 76I, 76J, and 76LJ, except for those Water Rights Arising Under State Law:

a. Whose purpose is irrigation and whose source of supply is surface water, and whose point of diversion is:

i. the mainstem of the Flathead River, including Flathead Lake;

ii. the North Fork of the Flathead River;

iii. the Middle Fork of the Flathead River; or

iv. the South Fork of the Flathead River.

b. Whose purpose is irrigation, whose source of supply is Groundwater connected to one of the sources identified in Article III.G.4.a, and whose flow rate is greater than 100 gallons per minute.

c. The Tribes and the United States agree that the Tribal Water Right recognized in the Compact may not be exercised to make Call against any Water Right Arising Under State Law upstream of the Flathead Reservation and located on a tributary to the Flathead River not identified in Article III.G.4.a.

5. Water Rights on the Little Bitterroot River Outside the Reservation (Basin 76L). The Tribes, on behalf of themselves and the users of any portion of the Tribal Water Right set forth in this Compact, and the United States agree to relinquish their right to exercise the Tribal Water Right to make a Call against any Water Right Arising Under State Law whose point of diversion is outside the Flathead Reservation and whose source of supply is the Little Bitterroot River or its tributaries.

6. Any Water Right Arising Under State Law the purpose of which is irrigation and that is susceptible to Call by the Tribes pursuant to Article III.D.1.g, III.D.2.e, III.D.3.e, III.D.5.a.iv, III.D.7.e, III.G.4.a, or III.G.4.b whose purpose is changed after the Effective Date to something other than irrigation shall remain susceptible to Call pursuant to the terms and conditions of this Compact as though the purpose of the Water Right Arising Under State Law was still irrigation.

H. Water Rights Arising Under State Law Appurtenant to Lands Acquired by the Tribes. For lands acquired by the Tribes within the Reservation, the Tribes have the right to any Water Right Arising Under State Law acquired as an appurtenance to the land. Starting upon the Effective Date of the Compact, the Tribes may file a Trust Transfer form with the Board for any lands acquired by the Tribes with appurtenant Water Rights Arising Under State Law that have been taken into trust by the United States on behalf of the Tribes, as provided in the Law of Administration and the water right appurtenant to the land shall be transferred to the Tribal Water Right quantified in this Compact with a priority date of July 16, 1855, provided that the Tribes shall continue to use the acquired water right as it was historically used or may change the use of the acquired water right pursuant to the provisions for change of use set forth in Article IV.B.4 and the Law of Administration. Such transfer does not shield the underlying right from abandonment based on acts or omissions of the holder of that water right prior to its acquisition by the Tribes.

## ARTICLE IV - IMPLEMENTATION OF COMPACT

A. Trust Status of Tribal Water Right. The Tribal Water Right shall be held in trust by the United States for the benefit of the Tribes, their members and Allottees.

B. Use of Tribal Water Right.

1. Persons Entitled to Use the Tribal Water Right. The Tribal Water Right may be used by the Tribes, their members, Allottees, or their lessees or assigns. FIIP customers who have assessed land within the FIIP

who are in compliance with the applicable BIA rules and guidelines are entitled to have delivered an equitable share of the FIIP Water Use Right as provided by Article IV.D.2.

2. Effect of Non-Use of the Tribal Water Right. Non-use of all or any portion of the Tribal Water Right described in Article III shall not constitute a relinquishment, forfeiture, or abandonment of such right.

3. Review of Registration of Existing Uses of the Tribal Water Right.

a. Within five (5) years after the Effective Date, the Board shall provide the DNRC with a report, in a form materially consistent with that of abstracts of water rights decreed by the Montana Water Court, of the Tribal Water Right registered pursuant to the Law of Administration as being in existence as of the Effective Date.

b. Within six (6) months after receipt of the report, the DNRC must agree, agree in part, or disagree with the report. If the DNRC takes no action by the end of the six-month period after the report is received, the report shall be deemed accepted. If the DNRC agrees in part or disagrees with the report, the State, the Tribes, and the United States shall meet within ninety (90) days of issuance of the DNRC's notice of disagreement in an effort to resolve the issue(s) giving rise to the disagreement. If, after meeting and conferring, the State, the Tribes, and the United States are still unable to come to agreement on the list of Existing Uses, all disagreements over the contents of the list must be brought to the Water Management Board for resolution of the dispute under Article IV.I.4.c within 180 days of the issuance of the DNRC's notice of disagreement.

4. Changes in Use of the Tribal Water Right. Any user of a portion of the Tribal Water Right who proposes a change of such use must seek authorization to change the use of that portion of the right. Such applications for authorization to change a use shall be heard and decided by the Board pursuant to Article IV.I.4.b of the Compact and the Law of Administration, provided that the Board may not consider any change application of Flathead System Compact Water unless the applicant has secured the written consent of the Tribal Council to apply for a Change in Use authorization.

5. New Development of the Tribal Water Right.

a. The Tribes, or any Person with authorization from the Tribes, may develop a new use of the Tribal Water Right on the Reservation after the Effective Date. Such development may only proceed upon the issuance of an Appropriation Right for the New Development by the Board pursuant to Article IV.I.4.a and the Law of Administration.

b. The Tribes, or any Person with authorization from the Tribes, may develop a new use of the Flathead System Compact Water Right set forth in Article III.C.1.c off the Reservation after the Effective Date, but only after complying with the provisions of Article IV.B.5.c.

c. Any New Development by the Tribes of a portion of the Tribes' Flathead System Compact Water Right off the Reservation shall be treated as a change in use. The DNRC shall process each change application pursuant to the provisions of 85-2-302, 85-2-307 through 85-2-310, and 85-2-314, MCA. Prior to developing Flathead System Compact Water for beneficial use off the Reservation, the Tribes must comply with the provisions of subsections (1) through (3) and (8) through (17) of 85-2-402, MCA, as those provisions read on December 31, 2014.

d. In the event that, after the date the ratification of the Compact by the Montana Legislature takes effect under State law, the Montana Legislature substantively amends or repeals any of the sections identified in Article IV.B.5.c, the Tribes and the DNRC shall meet no later than 60 days after the effective date of the State legislative action amending or repealing to determine if they can agree whether the provisions of State law set forth in Article IV.B.5.c or the new provisions of State law shall govern the process for off-Reservation development of new uses of the Flathead System Compact Water Right set forth in Article III.C.1.c. In the event that the Tribes and the DNRC are unable to agree, the provisions of State law identified in Article IV.B.5.c shall remain in effect. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact

e. If the Tribes' use of Flathead System Compact Water off the Reservation involves diversion works or facilities for the transport of water located off the Reservation, the Tribes shall apply for and obtain all permits, certificates, variances and other authorizations required by State laws regulating, conditioning or permitting the siting, construction, operation, alteration or use of any equipment, device, facility or associated facility proposed to use or transport water, prior to exercising a use of the Flathead System Compact Water Right off the Reservation.

6. Lease of the Tribal Water Right.

a. Lease of the Tribal Water Right generally.

i. Pursuant to the terms and conditions of this Compact, the Tribes may Lease, for use on or off the Reservation, any portion of the Tribal Water Right set forth in Article III.C.1.a, b, i, and j; provided, that either the Tribes or its assignee, on behalf of the Tribes, first comply with the procedures for changing the use of water rights set forth in subsections iii and iv of this Article IV.B.6.a, as applicable.

ii. The Tribes may make or authorize a Lease of the Tribal Water Right for use within or outside the Reservation; provided that, any Lease shall be for a term not to exceed 99 years, and may include provisions authorizing renewal for an additional term not to exceed 99 years. The off-Reservation use of any portion of the Tribal Water Right is limited to a place of use within the Flathead or Clark Fork River Basins in Montana.

iii. A Lease of the Tribal Water Right shall not adversely affect a Water Right Arising Under State Law with a priority date before the date of the Lease or an Appropriation Right issued pursuant to this Compact with a priority date before the date of the Lease. Uses of the Tribal Water Right being exercised prior to the date of the Lease shall not be adversely affected by a Lease of the Tribal Water Right, except that the Tribes may allow uses of the Tribal Water Right on Tribally owned land to be adversely affected by declining to object to the Change in Use application associated with the Lease.

1. If the Lease is for use on the Reservation, the determination of adverse effect shall be made by the Water Management Board pursuant to the process set forth regarding applications for Change in Use authorizations under the Law of Administration.

2. If the Lease is for use off the Reservation, the Lease shall be treated as a change in use. The DNRC shall process each change application pursuant to the provisions of 85-2-302, 85-2-307 through 85-2-310, and 85-2-314, MCA. Prior to the lessee putting leased water to beneficial use, the Tribes or their assignee, on behalf of the Tribes, must comply with the following provisions of State law as those provisions read on December 31, 2014:

a. Subsections (1) through (3) and (8) through (17) of 85-2-402, MCA;

b. Subsections (1) through (8) of 85-2-407, MCA, provided, that the term of any such Lease may be for up to 99 years, and the DNRC may approve the renewal of such a Lease for a period of up to 99 years; and

c. 85-2-408, MCA, as limited by the provisions of Article IV.B.6.a.iii.2.a.

iv. In the event that, after the date the ratification of the Compact by the Montana Legislature takes effect under State law, the Montana Legislature substantively amends or repeals any of the sections identified in Article IV.B.6.a.iii.2, the Tribes and the DNRC shall meet, no later than 60 days after the effective date of the State legislative action amending or repealing, to determine if they can agree whether the provisions set forth in Article IV.B.6.a.iii.2 or the new provisions of State law shall govern the process for off-Reservation Leases under this Compact. In the event that the Tribes and the DNRC are unable to agree, the provisions of Article IV.B.6.a.iii.2 shall remain in effect. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

v. The Tribes or any Person using diversion works or facilities for the transportation of water located off the Reservation in connection with a use of the Tribal Water Right shall apply for and obtain all permits, certificates, variances and other authorizations required by State laws regulating, conditioning or permitting the siting, construction, operation, alteration or use of any equipment, device, or facility proposed to use or transport

water, prior to exercising a use of the Tribal Water Right off the Reservation.

b. Lease of the Tribal Water Right by an Individual Indian Owner.

i. An Individual Indian Owner may enter into a Lease to authorize a Person or Persons to use the Individual Indian Owner's allocated portion of the Tribal Water Right on the Reservation.

ii. If the lessee intends to put the water to beneficial use in a manner different than how the Individual Indian Owner had been using the water prior to the date of the Lease, the Individual Indian Owner or the lessee must comply with the provisions of the Law of Administration pertaining to securing Change in Use authorizations from the Water Management Board before the use of water may be changed.

iii. Any Lease entered into pursuant to subsection b of this section may be for a term not to exceed 25 years, and may include provisions authorizing renewal for an additional term not to exceed 25 years.

iv. A Lease of the Tribal Water Right by an Individual Indian Owner shall not adversely affect a Water Right Arising Under State Law with a priority date before the date of the Lease or an Appropriation Right issued pursuant to this Compact with a priority date before the date of the Lease. Uses of the Tribal Water Right being exercised prior to the date of the Lease shall not be adversely affected by a Lease of the Tribal Water Right by an Individual Indian Owner, except that the Tribes may allow uses of the Tribal Water Right on Tribally owned land to be adversely affected by declining to object to the Change in Use application associated with the Lease.

c. Lease of the Flathead System Compact Water Right.

i. Pursuant to the terms and conditions of this Compact, the Tribes may Lease Flathead System Compact Water for use on or off the Reservation, provided that either the Tribes or their lessee comply with the Law of Administration and the relevant provisions of this section, as applicable.

ii. The Tribes shall make available Flathead System Compact Water for short-term Lease within the FIIP or the FIIP Influence Area pursuant to the Shared Shortages provisions set forth at Article IV.E. The Lease term may not exceed the period during which Shared Shortage provisions are in effect. The baseline annual price for this water shall be $8 per Acre-foot plus a $25 administrative fee per Lease as of July 1, 2015. From that date, the baseline annual price and the administrative fee shall be indexed for inflation and consequently adjusted annually on July 1st of each successive year thereafter (the Adjustment Date) by the percentage change over the previous twelve months in the most recent monthly Consumer Price Index for All Urban Consumers (CPI-U) published by the United States Department of Labor, Bureau of Labor Statistics, or such other index as the Parties may agree to use. The initial price for each Lease of any portion of the Flathead System Compact Water entered into during that year pursuant to the Shared Shortage provisions contained in Article IV.E shall be the

adjusted baseline price. During the term of any given Lease, the price per Acre-foot shall continue to adjust annually on the Adjustment Date by the percentage change in the CPI-U, or such other index as the Parties may agree to use, of the previous twelve-month period. The foregoing provisions regarding the adjusted baseline price and per-Lease administrative fee shall constitute the sole and exclusive price terms of each Lease entered under this Article IV.B.6.c.ii. Any modifications of the index are pursuant to, and shall not be deemed an amendment of, this Compact.

iii. The Tribes may make or authorize a Lease of the Tribal Water Right for use within or outside the Reservation; provided that, any Lease shall be for a term not to exceed 99 years, and may include provisions authorizing renewal for an additional term not to exceed 99 years. The off-Reservation use of any portion of the Tribal Water Right is limited to a place of use within the Flathead or Clark Fork River Basins in Montana.

iv. If the Lease is for a portion of the Tribes' Flathead System Compact Water right to be delivered wholly from water stored in Hungry Horse Reservoir, the Tribes shall provide notice to the DNRC and the Water Management Board, in advance of the effective date of the Lease, of the terms of the Lease and any modifications thereto or termination thereof. For Leases lasting one irrigation season or less, notice to the DNRC and the Water Management Board shall be provided as far in advance as practicable. For Leases lasting longer than one year, notice shall be provided to the DNRC and the Water Management Board by the later of 120 days prior to the date on which the Lease is to take effect or March 31 of the year in which the Lease is to take effect. The point of delivery for a Lease shall be the outlet works at the Hungry Horse Dam. If disputes arise between or among holders of Water Rights Arising Under State Law as to the reasonable transmission and carriage losses from the point of delivery to the place of use of the Lease, the district court pursuant to its powers and duties under Title 85, Chapter 5, MCA, shall calculate such losses.

v. Any Lease or portion of a Lease to be delivered from water stored in Hungry Horse Reservoir is subject to reduction due to conditions defined in Appendix 8 on a pro rata basis as set forth in Article III.C.1.c.iii.

vi. If the Lease is for the off-Reservation use of a portion of the Tribes' Flathead System Compact Water right to be delivered from a combination of stored water and direct flow water from the Flathead River, or exclusively from direct flow water from the Flathead River, the Lease shall be treated as a change in use as it pertains to the use of the direct flow water. The DNRC shall process each change application pursuant to the provisions of 85-2-302, 85-2-307 through 85-2-310, and 85-2-314, MCA. Prior to the lessee putting leased water to beneficial use, the Tribes or the lessee must comply with the following provisions of State law as those provisions read on December 31, 2014:

1. Subsections (1) through (3) and (8) through (17) of 85-2-402, MCA;

2. Subsections (1) through (8) of 85-2-407, MCA, provided, however, that the term of any such Lease may be for up to 99 years, and the DNRC may approve the renewal of such a Lease for a period of up to 99 years; and

3. 85-2-408, MCA, as limited by the provisions of Article IV.B.6.c.vi.1.

vii. In the event that, after the date the ratification of the Compact by the Montana Legislature takes effect under State law, the Montana Legislature substantively amends or repeals any of the sections identified in Article IV.B.6.c.vi.1 through 3, the Tribes and the DNRC shall meet no later than 60 days after the effective date of the State legislative action amending or repealing to determine if they can agree whether the provisions set forth in Article IV.B.6.c.vi.1 through 3 or the new provisions of State law shall govern the process for off-Reservation Leases under this Compact. In the event that the Tribes and the DNRC are unable to agree, the provisions of Article IV.B.6.c.vi.1 through 3 shall remain in effect. Any agreed upon modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

viii. The Tribes or any Person using diversion works or facilities for the transportation of water located off the Reservation in connection with a use of the Flathead System Compact Water Right shall apply for and obtain all permits, certificates, variances and other authorizations required by State laws regulating, conditioning or permitting the siting, construction, operation, alteration or use of any equipment, device, or facility proposed to use or transport water, prior to exercising a use of the Flathead System Compact Water Right off the Reservation.

7. Lease of 11,000 Acre-Feet per Year of Water From Hungry Horse Reservoir for Off-Reservation Mitigation.

a. The Tribes shall make available for Lease off the Reservation 11,000 Acre-feet of the water identified in Article III.C.1.c.i stored in Hungry Horse Reservoir pursuant to the process, and subject to the terms and conditions, set forth in this Article IV.B.7.

b. The water identified in Article IV.B.7.a shall be available for the mitigation of net depletions arising from new or existing domestic, commercial, municipal and/or industrial uses of water at any point in the Flathead or Clark Fork Basins in Montana for which the 11,000 Acre-feet per year of water is capable of providing mitigation.

c. The DNRC, under Title 85, MCA, shall retain the responsibility for determining if, when, where, and how much mitigation water is needed for any proposed new development and if the water identified in Article IV.B.7.a meets the appropriate mitigation criteria for any proposed mitigation plan.

d. The water identified in Article IV.B.7.a is subject to reduction due to conditions defined in Appendix 8 on a pro rata basis as set forth in Article III.C.1.c.iii.

e. The mechanism for entering into a Lease for any portion of the water set forth in this Article IV.B.7.a shall be as follows:

i. Any interested Person may approach the Tribes, through the Tribal Lands Department or successor Tribal department, to negotiate a Lease of a portion of this water;

ii. The baseline annual per Acre-foot price for this water shall be set at $40 as of July 1, 2015. From that date, the baseline price shall be indexed for inflation and consequently adjusted annually on July 1st of each year thereafter (the Adjustment Date) by the percentage change over the previous year in the most recent monthly Consumer Price Index for All Urban Consumers (CPI-U) published by the United States Department of Labor, Bureau of Labor Statistics, or such other index as the Parties may agree. The initial price for each Lease of any portion of the 11,000 Acre-feet identified in this Article IV.B.7 entered into during that year shall be the adjusted baseline price. During the term of any given Lease, the price per Acre-foot shall continue to adjust annually on the Adjustment Date by the percentage change in the CPI-U, or such other index as the Parties may agree to use, of the previous twelve-month period. The foregoing provisions regarding the adjusted baseline price shall constitute the sole and exclusive price term of each Lease;

iii. Each Lease between the Tribes and a lessee shall be for a term of 99 years, with the lessee holding an option to renew for an additional 99 years, unless the Tribes and the lessee affirmatively agree on an alternate duration not to exceed 99 years. Any Lease including a term of alternate duration may also include an option to renew for a term not to exceed 99 years; and

iv. The Tribes and each prospective lessee shall negotiate any and all other non-price terms of the Lease arrangement.

f. In the event of an impasse between the Tribes and a prospective lessee over any non-price term, the prospective lessee may file a notice of impasse with the Water Management Board, invoking the Board's authority to resolve any such impasse pursuant to the process set forth in Article IV.B.7.g.

g. Process for resolving disputes over Lease terms.

i. Upon receipt of a notice of impasse, the Board shall date stamp it. Within three days of the filing of a notice of impasse, the Board shall provide notice of the filing to the Tribes, with a copy to the prospective lessee, identifying a date certain between 30 and 60 days from the date of receipt of the notice for the Tribes and the prospective lessee each to submit a last, best offer concerning all of the non-price terms.

ii. No later than the date set by the Board, the Tribes and the prospective lessee shall file a last, best offer with the Board in the form of a proposed Lease agreement and shall serve the same on each other. To be filed, the offer must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing. Immediately upon receipt by the Board, the offers shall be date stamped. If the Tribes fail to timely file an offer, the offer filed by the prospective lessee shall become the terms of the Lease. If the prospective lessee fails to timely file an offer, no Lease shall be concluded.

iii. The Board shall issue a decision selecting one side's offer or the other's between 15 and 45 days after the filing of the offer. At any time prior to the Board's decision, the prospective lessee may choose to withdraw the prospective lessee's offer and decline to enter into the Lease.

iv. The Board shall provide notice of its decision to both the Tribes and the prospective lessee. The Lease shall be concluded on the terms selected by the Board, but must include the price term identified in Article IV.B.7.e.ii of this Compact. The effective date of the Lease shall be ten days after the Board's issuance of its decision.

v. The Tribes or a prospective lessee dissatisfied with a decision of the Board made pursuant to this Article IV.B.7.g may appeal that decision by filing a petition for judicial review with a Court of Competent Jurisdiction within 30 days of the issuance of the Board's decision. The court shall review the Board's decision for abuse of discretion.

C. Exercise of Certain Portions of the Tribal Water Right Related to the FIIP.

1. Priority for the Exercise of the FIIP Instream Flow and FIIP Water Use Rights. Once the water rights described in Article III.C become enforceable, the following relative priorities among those rights shall apply:

a. Minimum Enforceable Instream Flows.

b. Minimum Reservoir Pool Elevations.

c. River Diversion Allowances.

d. Target Instream Flows.

2. Reallocated Water in excess of Target Instream Flows will be split as equally as hydrologically practicable between the Instream Flow water rights set forth in Article III.C.1.d.ii and the FIIP Water Use Right set forth in Article III.C.1.a.

3. MEF and TIF implementation and schedule. Exercise of FIIP Instream Flow Rights set forth in Article III.C.1.d.ii shall be accomplished through the implementation and enforcement of MEFs and TIFs and is subject

to the Shared Shortage and Adaptive Management provisions set forth in Article IV.E and F and Appendix 3.5.

a. MEFs and TIFs shall be enforceable at the values set forth in Appendix 3.1.

b. Implementation and enforceability of MEFs and TIFs.

i. Incremental implementation of Operational Improvements will result in additional FIIP Instream Flow.

ii. MEFs and TIFs shall be enforceable following the completion of Operational Improvements according to the schedule attached hereto as Appendix 3.4.

iii. Reallocated Water from Rehabilitation and Betterment Projects shall be used to incrementally achieve FIIP Instream Flows set forth in Article III.C.1.d.ii.

iv. If the schedule attached hereto as Appendix 3.4 cannot be met due to lack of available funding or other circumstances outside of the control of the Parties or Project Operator, the Parties may agree to adjust the schedule as necessary to allow for timely implementation of MEFs and TIFs. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

v. If the Project Operator fails to implement the schedule attached hereto as Appendix 3.4 due to acts, errors, or omissions of the Project Operator, MEFs and TIFs will be enforceable as though the schedule had been implemented.

c. Until an MEF has become enforceable, the interim Instream Flow, where applicable, for that location shall be the enforceable Instream Flow. Where the Instream Flow has been incrementally increased above the interim Instream Flow level as a result of the partial completion of actions listed in the Implementation Schedule attached hereto as Appendix 3.4, the incrementally achieved level may be maintained until the MEF is achieved.

d. Until a Minimum Reservoir Pool Elevation has become enforceable, the interim reservoir pool elevation, where applicable, for that location shall be enforced.

e. TIFs shall be determined seasonally according to Appendix 3.5, and will vary between the wet and normal year levels attached hereto as Appendix 3.1.

4. Minimum Reservoir Pool Elevations. Minimum Reservoir Pool Elevations attached hereto as Appendix 3.1 shall be enforceable according to the schedule specified in Appendix 3.4. Enforceability of Minimum Reservoir Pool Elevations is subject to Article IV.E, Appendix 3.5, and superseding Federal law allowing for regulation of reservoir elevations.

D. Exercise of the FIIP Water Use Right.

1. FIIP Water Use Right.

a. The FIIP Water Use Right shall be satisfied by meeting the RDA values for each RDA Area attached

hereto as Appendix 3.2 and as evaluated pursuant to Article IV.D.1.e.

b. RDAs shall be enforceable according to the schedule attached hereto as Appendix 3.4, subject to evaluation pursuant to Article IV.D.1.e.

c. Headworks diversion amounts shall be progressively adjusted to achieve the RDAs as Operational Improvements are completed pursuant to Appendix 3.4.

d. Once RDAs are achieved through completion of Operational Improvements, headworks diversion amounts shall be progressively adjusted as Rehabilitation and Betterment is completed pursuant to Appendix 3.6. The enforceable RDA for the location in which a particular Rehabilitation and Betterment project has been completed is the amount defined in Appendix 3.2, reduced by the volume of Reallocated Water made available by that Rehabilitation and Betterment project. The amount actually diverted may be adjusted pursuant to the evaluation process described in Article IV.D.1.e.

e. RDA values shall be evaluated to ensure their adequacy to meet Historic Farm Deliveries. Initial evaluation of RDAs shall occur once the Parties and Project Operator have completed all Operational Improvements in a given RDA Area according to the schedule attached hereto as Appendix 3.4. Evaluation of RDAs will continue as part of the responsibilities of the CITT described in Appendix 3.5 as follows:

i. The Project Operator must measure and record farm turnout deliveries within a given RDA Area.

ii. If the aggregate measured deliveries to farm turnouts do not meet Historic Farm Deliveries for a given RDA Area, actual diversions shall be adjusted to assure that Historic Farm Deliveries are met for wet, normal and dry water years. If water in excess of the RDA is needed to meet Historic Farm Deliveries, it will be provided through an increase of the Flathead River pumping plant diversion allowed by the Flathead Pumping Station RDA attached hereto as Appendix 3.2. If the aggregate measured deliveries to farm turnouts exceed Historic Farm Deliveries within an RDA Area, the actual diversions shall be reduced accordingly.

iii. Any adjustment of actual diversions pursuant to this section shall not result in decrease of the MEFs, TIFs, or Minimum Reservoir Pool Elevations.

f. RDAs are quantified for wet, normal, and dry Natural Flow years, attached hereto as Appendix 3.2, and shall be set each year according to the process specified in Appendix 3.5.

2. FIIP Delivery Entitlement Statement. Assessed land within the FIIP is entitled to have water delivered by the Project Operator if the FIIP customer is in compliance with the applicable BIA rules and guidelines for FIIP. Beginning on the Effective Date, an owner of assessed land within the FIIP may request of the Project Operator a delivery entitlement statement, which must be tendered within 90 days of the request or denied for cause.

Beginning on the date one year after the Effective Date, the delivery entitlement statement must be tendered or denied within 30 days. The delivery entitlement runs with the land and is valid so long as the land remains assessed and the FIIP customer is in compliance with the applicable BIA rules and guidelines for FIIP.

E. Shared Shortages Provision.

1. In the event that water supplies are inadequate to simultaneously satisfy an enforceable Instream Flow water right and a corresponding RDA, the provisions of Article IV.E govern the exercise of the water rights set forth in Articles III.C.1.a and III.C.1.d.ii and iv at that location. The CITT shall determine when Shared Shortages conditions begin and end as specified in Appendix 3.5.

2. For purposes of Article IV.E, once MEFs and RDAs have become enforceable, they shall be maintained at the levels set forth in Appendices 3.1 and 3.2, as adjusted pursuant to Article IV.D.1.e. Prior to enforceability of the MEF and RDA levels attached hereto as Appendices 3.1 and 3.2, Instream Flows will be maintained as provided by Article IV.C.3.c and RDAs will be maintained as provided by Article IV.D.1.b and c.

3. Subject to the priority system set forth in Article IV.C.1, RDAs shall be maintained by implementing the following measures in the order of priority set forth below:

a. Available Natural Flow or regulated streamflow shall be diverted by the Project Operator to satisfy RDAs.

b. If the application of Article IV.E.3.a does not satisfy RDAs, Flathead River pumping plant diversions shall be increased as allowed by the Flathead Pumping Station RDA attached hereto as Appendix 3.2.

c. If the application of Article IV.E.3.a and b does not satisfy RDAs, FIIP reservoirs may be reduced below the Minimum Reservoir Pool Elevations specified in Appendix 3.1 to supply RDAs, subject to Article IV.E.5.

d. If the application of Article IV.E.3.a through c does not satisfy RDAs, the Tribes shall make available for short-term lease Flathead System Compact Water for use within the FIIP as provided by Article IV.B.6.c.ii.

4. Within the Basin 76LJ portion of the Little Bitterroot Valley, RDAs shall be maintained by sequentially applying the procedures in Article IV.E.3.a through c, where applicable.

5. As set forth in Article IV.E.3.c, FIIP reservoirs may be reduced below the Minimum Reservoir Pool Elevations set forth in Article III.C.1.e to support RDAs as follows:

a. FIIP reservoirs may be reduced pursuant to this section for no more than four consecutive years.

b. Article IV.E.3.c does not apply to Mission Reservoir.

c. FIIP reservoirs may not be reduced below the interim reservoir pool elevations set forth in Article III.C.1.e.iv and attached hereto as Appendix 13.

d. RDAs may be met from carryover reservoir storage, at the discretion of the Project Operator.

F. Requirement to Implement Adaptive Management and Water Measurement.

1. The Parties agree that Adaptive Management and a comprehensive water measurement program, as described in Appendix 3.5, are essential to the successful implementation of this Compact.

2. The Parties, upon mutual written agreement, and in conformance with the Compact and other applicable provisions of law, may amend Appendix 3.5. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

G. Compact Implementation Technical Team. Within six months of the date the ratification of the Compact by the Montana Legislature takes effect under State law, the Parties shall establish a Compact Implementation Technical Team (CITT) to allow planning for and implementation of Operational Improvements, Rehabilitation and Betterment, and Adaptive Management prior to and following the Effective Date.

1. The CITT membership shall be as provided for in Appendix 3.5.

2. The CITT shall carry out the duties specified by Appendix 3.5.

3. The CITT shall develop criteria for prioritizing and selecting projects.

4. Public Meetings and Records:

a. All regularly scheduled meetings of the CITT shall be open to the observation of the general public pursuant to State and Tribal open meeting laws. Where there is a conflict of laws, the law that provides for greater openness to the public applies.

b. CITT records are public records and shall be made available to the public for inspection under such reasonable terms and conditions as the CITT shall establish.

5. Disputes Related to the Compact Implementation Technical Team. The Parties agree to perform each obligation set forth in this Compact in good faith and with diligence and loyalty to this agreement. The Parties shall form a Compact Management Committee (CMC) comprised of the Director of the Montana Department of Natural Resources, the Chairman of the Tribal Council, and the Regional Director of the Northwest Region of the Bureau of Indian Affairs or their designees. The CMC will provide policy and administrative oversight of the CITT.

a. The CITT shall attempt to reach consensus on all of its actions.

b. Where consensus is not achieved, the CITT will resolve disputed issues by majority vote.

c. If the CITT vote results in a tie, or is appealed, the disputed issue will be referred to the CMC. The CMC will review and attempt to reach consensus on the disputed issue and if consensus is not possible, will resolve the issue by majority vote.

d. A majority vote of the CMC may be appealed using the following procedures:

i. Disputes arising out of any act, failure to act, error or omission of the BIA or Project Operator involving Operational Improvements or Rehabilitation and Betterment or otherwise affecting real property owned by the United States may be appealed under Title 25, Part 2, Code of Federal Regulations.

ii. For disputes raising questions of Compact interpretation, the CMC shall immediately seek a determination of those questions from the Water Management Board, which determination will be provided in writing within 30 days.

iii. All other disputes may be appealed to a Court of Competent Jurisdiction. In considering a petition for relief, a Court of Competent Jurisdiction will review the CMC's legal conclusions for correctness and its factual findings for abuse of discretion.

H. Power Provisions

1. Low-Cost Block of Power

The Parties recognize that Article 40 of the Kerr Project License, as amended, jointly issued to the Montana Power Company and the Tribes for the Kerr Project, Project No. 5, requires Montana Power Company, through its successor-in-interest, NorthWestern Energy, to make available the capacity and energy up to 3.734 megawatts at up to 100 percent load factor during the months of April through October to the United States, for and on behalf of the FIIP, at the rates set forth in and adjusted in accordance with such Article.

The Parties agree that the Kerr Project License Article 40 Low Cost Block of Power is equivalent to the delivery of 19,178,000 kilowatt hours of electricity per year, and generally supplies electricity necessary to pump approximately 46,000 Acre-feet of water per year to the FIIP. If the operation and maintenance, and all other rights and responsibilities for the Kerr Project are assumed by the Tribes or their wholly-owned corporation, the Tribes agree, to the extent permitted under applicable license(s) and Federal law, to make the Low Cost Block of Power available in the same manner and at the same rates, as adjusted, as NorthWestern Energy. If the Tribes seek a new license for the Kerr Project, the Tribes or their wholly-owned corporation, agree that their license application will request authority from FERC to make the Low Cost Block of Power available in the same manner and at the same rates, as adjusted, as NorthWestern Energy.

2. Net Power in Excess of Low Cost Block

For purposes of Article IV.E, power required to run the Flathead Pumping Station in excess of the Low Cost Block of Power identified in Article IV.H.1 shall be purchased at the price at which Mission Valley Power sells power for irrigation purposes.

3. Net Power Revenues

The State and Tribes agree to seek provisions in the Federal legislation ratifying this Compact for Mission Valley Power to budget annually for an anticipated amount of $200,000 of Net Power Revenues to be made available in the subsequent year to meet the needs of both the power system and the FIIP with an initial allocation of the Net Power Revenue that provides fifty percent to the Project Operator and fifty percent to the Tribes. These funds shall only be used for work on the FIIP that has significant fisheries, water conservation, or water management benefits. If on an annual basis such work by the Project Operator or the Tribes does not require the full amount of such net revenues the remainder shall be set aside and accumulated for future expenditure for these purposes. This initial allocation may be changed by mutual agreement of the Parties within nine (9) years of the Effective Date, with any subsequent agreement to become effective on the tenth (10th) anniversary of the Effective Date. Any such modification is pursuant to, and shall not be deemed an amendment of, this Compact.

I. Administration: Establishment of Flathead Reservation Water Management Board.

1. Establishment of Board. There is hereby established the Flathead Reservation Water Management Board. Upon the Effective Date, the Board shall be the exclusive regulatory body on the Reservation for the issuance of Appropriation Rights and authorizations for Changes in Use of Appropriation Rights and Existing Uses, and for the administration and enforcement of all Appropriation Rights and Existing Uses. The Board shall also have exclusive jurisdiction to resolve any controversy over the meaning and interpretation of the Compact on the Reservation, and any controversy over the right to the use of water as between the Parties or between or among holders of Appropriation Rights and Existing Uses on the Reservation except as explicitly provided otherwise in Article IV.G.5. The jurisdiction of this Board does not extend to any water rights whose place of use is located outside the exterior boundaries of the Reservation.

2. Membership.

a. Voting Members. The Board shall consist of five voting members: two members selected by the Governor of the State pursuant to Article IV.I.2.b, after consultation with holders of Water Rights Arising Under State Law located on the Reservation; two members appointed by the Tribal Council; and one member selected by the other four members. All members shall be appointed within six months of the Effective Date.

b. Appointment by Governor. Within 90 days of the Effective Date, or 15 days of any vacancy in one or more of the Board positions selected by the Governor, the commissioners of each county whose boundaries include any portion of the Reservation shall nominate individuals for the Governor's consideration for appointment

to the Board as follows:

i. The Commissioners of Lake County shall choose five (5) nominees;

ii. The Commissioners of Sanders County shall choose three (3) nominees;

iii. The Commissioners of Missoula County shall choose two (2) nominees;

iv. The Commissioners of Flathead County shall choose one (1) nominee; and

v. Each nominee must meet the eligibility requirements of Article IV.I.2.f.

The Governor shall choose two Board members from the group of nominees. If the county commissioners fail to nominate a minimum of seven (7) individuals for selection by the Governor within the time set forth in Article IV.I.2.b, the Governor may select any two individual(s) who meet the eligibility requirements set forth in Article IV.I.2.f after consultation with Holders of Water Rights Arising Under State Law located on the Reservation.

c. Should the four appointed members fail to agree on the selection of a fifth voting member within sixty days of the date of appointment of the fourth member, or within thirty days after any vacancy in that fifth position occurs, the following procedure shall be utilized:

i. Within five days thereafter the two members appointed by the Tribal Council shall nominate three individuals to serve as a member of the Board and the two members appointed by the Governor shall nominate three individuals to serve as a member of the Board;

ii. Within fifteen days thereafter the two members appointed by the Tribal Council shall reject two of the individuals nominated by the two members appointed by the Governor, and the two members appointed by the Governor shall reject two of the individuals nominated by the two members appointed by the Tribal Council; and

iii. Within five days thereafter, the remaining two nominees shall be submitted to the Chief Judge of the United States District Court for the District of Montana for selection of the fifth member of the Board.

d. Ex Officio Member. The Board shall also have a sixth, non-voting member appointed by the Secretary.

e. Term. Initially, three voting members of the Board shall serve for four years, and two shall serve for two years. One member appointed by the Governor, one member appointed by the Tribal Council and the fifth voting member shall serve for four years. One member appointed by the Governor and one member appointed by the Tribal Council shall serve for two years. The member appointed by the Secretary shall be appointed for four years. At the expiration of the initial two-year appointments, all subsequently appointed Board members shall serve four year terms.

f. Eligibility. To be eligible to serve on the Board, an individual must be over 18 years of age and be a

Reservation resident. For the purposes of filling a position on the Water Management Board, a Reservation resident is an individual who:

i. does business within Flathead Indian Reservation boundaries;

ii. is domiciled within Flathead Indian Reservation boundaries; or

iii. owns and maintains a seasonal residence within Flathead Indian Reservation boundaries.

An eligible individual must also have education and experience in one or more of the following fields: natural resources management, public administration, agriculture, engineering, commerce or finance, hydrology, biological sciences, water law or water policy.

No elected official of the State of Montana, or any political subdivision thereof, or of the United States, or of the Tribes is eligible for nomination to the Board while holding such elective office. However, a nominee for Board membership shall not be disqualified by reason of the fact that he or she is an employee or contractor of the State of Montana or any political subdivision thereof, or of the Tribes, or of the United States.

No Board member may vote on any application or appeal that the member participated in personally and substantially in any non-Board capacity.

g. Vacancies. Subject to the provisions of Article IV.I.2.a and c regarding the filling of a vacancy of the fifth member of the Board, upon the occurrence of any other vacancy in a Board position, the Tribal Council, if the vacancy is in a position appointed by the Tribal Council, or the Governor, if the vacancy is in a position appointed by the Governor, shall name a new Board member within 30 days of the occurrence of the vacancy. Should Board action be required during the period of any such vacancy, the Department Head of the Tribal Natural Resources Department, if the vacancy is in a position appointed by the Tribal Council, or the Director of the DNRC, if the vacancy is in a position appointed by the Governor, shall fill the vacant position on an acting basis until a new appointment is made.

h. Compensation and Expenses of the Board. Each Board member shall receive such compensation for services and reimbursement for expenses for attendance at Board meetings as shall be fixed by the State and the Tribal Council for the Board members appointed by the same. The compensation for the fifth Board member shall be set jointly by the State and the Tribal Council. The expenses of the Federal ex officio member shall be covered by the United States.

3. Quorum and Vote Required. Four Board members appointed pursuant to Article IV.I.2.a shall constitute a quorum. No Board action may be voted upon in the absence of a quorum. All Board decisions shall be by affirmative vote of a majority of the Board, except as set forth in Article IV.I.5.d for the appointment of water

commissioners. If a proposal put to a vote of a quorum of Board members ends in a tie vote, the proposal is deemed disapproved or denied.

4. Jurisdiction of the Board.

a. Issuance of Appropriation Rights. Upon the Effective Date, the Board shall have exclusive jurisdiction over the issuance of all new Appropriation Rights on the Reservation. The process for the consideration, issuance or denial of all Appropriation Rights is set forth in the Law of Administration.

b. Authorizations for Changes in Use. Upon the Effective Date, the Board shall have exclusive jurisdiction over the issuance of authorizations for Changes in Use of all water rights on the Reservation. The process for the consideration, issuance or denial of such Change in Use authorizations is set forth in the Law of Administration.

c. Enforcement. Upon the Effective Date, the Board shall have the jurisdiction to enforce the terms of this Compact as provided by Article IV.I.1. All controversies cognizable under this subsection shall be heard and resolved pursuant to the Compact and the Law of Administration.

d. Water Right Ownership Updates. The Board shall not have jurisdiction over water right ownership updates on water rights appurtenant to fee lands, which shall remain with the DNRC as set forth in 85-2-421 through 85-2-424, 85-2-426, and 85-2-431, MCA.

5. Powers and Duties.

a. In General. The Board shall have the power to promulgate procedures, prescribe forms, develop additional materials and implement amendments thereto as may be necessary and proper to exercise its jurisdiction and carry out its assigned functions under this Compact and the Law of Administration. A set of forms for initial use by the Board in the implementation of the Law of Administration is attached hereto as Appendix 37. The Board may amend these forms at its discretion. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

b. Hearings. Pursuant to the procedures set forth in the Law of Administration, the Board shall hold hearings upon notice in proceedings before it and shall have the power to administer oaths, take evidence and issue subpoenas to compel attendance of witnesses or production of documents or other evidence, and to appoint technical experts. The Tribes and the State shall enforce the Board's subpoenas in the same manner as prescribed by the laws of the Tribes and the State for enforcing a subpoena issued by the courts of each respective sovereign in a civil action. The Persons involved in the controversy may present evidence and cross-examine any witnesses. The Board shall cause all hearings to be recorded, and shall determine the

controversy and grant any declaratory or injunctive relief allowed by the Law of Administration, including a temporary order. The Board shall not have power to award money damages, attorneys' fees or costs; however it shall have the power to impose fines pursuant to the terms of the Law of Administration and award any kind of equitable relief. All decisions of the Board shall be in writing, and, together with a written justification for the decision and any dissenting opinions, shall be served personally or by certified mail on all Persons involved in the proceeding before the Board. All records of the Board shall be open to public inspection.

c. Employment of Water Engineer. The Board shall have the authority to employ a Water Engineer to carry out such functions as assigned by the Board pursuant to the Law of Administration, including the supervision of any water commissioners appointed by the Board. As set forth in the Law of Administration, the Engineer shall hold hearings upon notice in proceedings before the Engineer and shall have the power to administer oaths, take evidence and issue subpoenas to compel attendance of witnesses or production of documents or other evidence, and to appoint technical experts. The Tribes and the State shall enforce the Engineer's subpoenas in the same manner as prescribed by the laws of the Tribes and the State for enforcing a subpoena issued by the courts of each respective sovereign in a civil action. The Persons involved in the controversy may present evidence and cross examine any witnesses. The Engineer shall cause all hearings to be recorded, and shall determine the controversy and grant any relief allowed by the Law of Administration, including a temporary order. All decisions of the Engineer shall be in writing, and, together with a written justification for the decision, shall be served personally or by certified mail on all Persons involved in the proceeding before the Engineer. All records of the Engineer shall be open to public inspection.

d. Appointment of Water Commissioner(s)

i. The Board shall have the authority, upon a unanimous vote of all five members of the Board, to appoint one or more commissioners to provide day-to-day administration of water on the Reservation. The compensation for any such commissioner and the identification of the Person(s) responsible for paying costs associated with the appointment of any such commissioner must also be established by a unanimous vote of all five members of the Board as part of the Board action appointing any such commissioner. Any commissioner appointed shall act under the supervision of the Water Engineer.

ii. Under the jurisdiction of the Board, and as set forth in the Law of Administration, the commissioner(s) shall have the authority to administer and distribute water only on the Reservation. The authority of any commissioner(s) appointed pursuant to this subsection, as it pertains to portions of the Tribal Water Right used within the FIIP, extends only to the delivery of water to FIIP diversion facilities and shall not extend to the

administration of that water in FIIP facilities or on lands served by the FIIP, which shall remain subject to the authority of the Project Operator.

6. Review and Enforcement of Board Decisions.

a. Decisions by the Board shall be effective immediately, unless stayed by the Board. Persons involved in the proceedings before the Board may appeal any final decision by the Board to a Court of Competent Jurisdiction within thirty days of such decision. An appeal of a final decision of the Board shall be styled as a petition for judicial review of an agency decision pursuant to the rules of procedure of the court from which review is sought. The petition for judicial review shall be filed with the Board and the court and served upon all Persons involved in the proceeding before the Board, as well as the Tribes, the State and the United States. Service shall be accomplished according to the requirements of the court's rules of procedure.

b. Unless a petition is filed within thirty days of a final decision of the Board, as provided in Article IV.I.6.a, any decision of the Board shall be recognized and enforced by any court with personal and subject matter jurisdiction over the matter on petition by any Person, or a successor in interest, before the Board in the proceeding in which the decision was made.

c. A Court of Competent Jurisdiction in which a timely petition is filed pursuant to Article IV.I.6.a, or any court with personal and subject matter jurisdiction over the matter in which a petition to confirm or enforce is filed pursuant to Article IV.I.6.b, may order such temporary or permanent relief as it considers just and proper subject to the limited waivers of immunity set forth in Article IV.I.8.

d. An appeal may be taken from any decision of the court in which a timely appeal is filed pursuant to Article IV.I.6.a, or in which a petition to confirm or enforce is filed pursuant to Article IV.I.6.b, in the manner and to the same extent as from orders or judgments of the court in a civil action.

e. In any petition to confirm or enforce the Board's decision, the Board shall file with the court to which appeal is taken the record of the proceedings before the Board within the time and in the manner provided by the court's rules of procedure.

f. The appellate court shall conduct the review on the record made before the Board. In considering the petition, the Board's legal conclusions shall be reviewed for correctness and its factual findings for abuse of discretion.

g. In the event that a court determines that it lacks subject matter or personal jurisdiction to rule on a petition for judicial review of a Board decision, the party filing the petition shall be entitled to petition for judicial review from any other Court of Competent Jurisdiction within thirty days from the date of a final court order finding

a lack of jurisdiction.

7. Public Meetings and Records

a. Notwithstanding any other provisions of law, the Board is a public agency for purposes of the applicability of State and Tribal right to know laws.

b. All regular and special meetings of the Board, including all hearings conducted by the Office of the Engineer or the Board, shall be open to the observation of the general public pursuant to State and Tribal open meeting laws. Where there is a conflict of laws, the law that provides for greater openness to the public applies.

c. Where no more specific notice provisions are set forth in the Law of Administration, notice of any meeting, including an agenda, shall be provided to the public in a manner and timeframe consistent with the criteria set forth in State and Tribal law. Where there is a conflict of laws, the law that provides for earlier notice shall apply.

d. The Board shall keep the following records:

i. minutes of all meetings;

ii. recordings of all hearings conducted by the Board or the Office of the Engineer;

iii. all documents filed with or generated by the Board or the Office of the Engineer;

iv. any other records required by applicable provisions of Federal, State or Tribal law, provided that if there is a conflict of laws, the law that provides for more expansive record retention shall apply.

e. All Board records are public records and shall be made available to the public for inspection under such reasonable terms and conditions as the Board shall establish.

8. Waiver of Immunity. The Tribes and the State hereby waive their respective immunities from suit, including any defense the State shall have under the Eleventh Amendment of the Constitution of the United States, in order to permit the resolution of disputes under the Compact by the Board, and the appeal or judicial enforcement of Board decisions as provided herein, except that such waivers of sovereign immunity by the Tribes or the State shall not extend to any action for money damages, costs, or attorneys' fees. The Parties recognize that only Congress can waive the immunity of the United States and that the participation of the United States in the proceedings of the Board shall be governed by Federal law, including 43 U.S.C. 666.

J. Amendments to the Law of Administration. The Board may not amend the Law of Administration. No amendment by the Tribes or the State of the Law of Administration shall be effective unless and until the other makes an analogous amendment. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

K. Water Rights Database. The Board shall cause all Appropriation Rights and Changes in Use authorized by the Board and all uses of water registered pursuant to the Law of Administration to be entered into the DNRC water rights database in a format agreed to by the Board and the DNRC.

ARTICLE V - DISCLAIMERS AND RESERVATION OF RIGHTS

A. No Effect on Water Rights of Other Tribes or on other Federal Reserved Water Rights.

1. Except as otherwise provided herein, the relationship between the Tribal Water Right described herein and any water rights of any other Indian tribe or its members, or of any federally-derived water right of an individual outside the boundaries of the Flathead Indian Reservation, or of the United States in its own right or on behalf of such other tribes or individuals, shall be determined by the rule of priority.

2. Nothing in this Compact shall be construed or interpreted as a precedent to establish the nature, extent, or manner of administration of the rights to water of any other Indian tribe, its members or Indian owners of trust land outside of the Flathead Indian Reservation.

3. Nothing in this Compact is intended, nor shall it be used, to affect or abrogate a right or claim of an Indian tribe other than the Confederated Salish and Kootenai Tribes.

4. Except as provided herein and authorized by Congress, nothing in this Compact shall be construed or interpreted to establish the nature, extent, or manner of administration of rights to water of the United States on Federal lands outside of the Flathead Indian Reservation.

B. General Disclaimers. Nothing in this Compact shall be construed or interpreted:

1. To preclude the Tribes, Tribal members, and Allottees, or the United States, from applying to the Water Management Board for an Appropriation Right under the Law of Administration on the same basis as any other Person;

2. As a precedent for litigation of aboriginal or reserved water rights;

3. As precedent for interpretation or administration of future compacts between the United States and the State, or between the United States and any other state, or between the State and any other state;

4. As precedent for negotiation, interpretation or administration of any existing or future Compact, negotiated settlement, judicial settlement or other form of accommodation of water rights involving Indian tribes or individual Indians;

5. To preclude the possession, acquisition or exercise of Water Rights Arising Under State Law by the Tribes or Allottees or members of the Tribes;

6. To limit in any way the right of the Parties or any other Person to litigate any issue or question not

resolved by this Compact;

7. To authorize the taking of any water right that is vested under State, Tribal or Federal law;

8. To affect the ability of tribes or qualified individuals under Title 25, Sections 151.4 and 151.8, Code of Federal Regulations, to purchase land from willing sellers or the Secretary's ability to convert fee land to trust land status;

9. To create or deny substantive rights through headings or captions used in this Compact;

10. To address or prejudge how the Tribal Water Right may be treated or interpreted in any interstate or international water apportionment proceeding;

11. To constitute a waiver of sovereign immunity by the Tribes or the State except as expressly set forth in this Compact;

12. To constitute a waiver of sovereign immunity by the United States except as expressly set forth in 43 U.S.C. 666 or as otherwise provided by Congress;

13. Except as expressly provided herein and as may be required by Congress, to modify the obligations of any agency of the United States;

14. To limit or prohibit the Tribes, their members or Allottees, or to limit the United States in any capacity, from objecting in any general stream adjudication in the Montana Water Court to any claims to water rights on or off the Flathead Indian Reservation;

15. To prevent the Montana Water Court from adjudicating any properly filed claims or objections to the use of water within the Flathead Indian Reservation;

16. To limit or prohibit the Tribes, their members or Allottees, or the United States in any capacity, from filing any necessary action to prevent any Person or Party from interfering with the Tribal Water Right;

17. To affect or determine the applicability of any State, Tribal or Federal law not subject to this Compact, including, but not limited to environmental and public safety laws, on activities of the Tribes, their members or Allottees or the United States;

18. To prejudice or predetermine any right that Tribal members or Allottees have to obtain the use of a portion of the Tribal Water Right under the provisions of this Compact and the Law of Administration;

19. To affect the capacity of any Tribal member or Allottee to lease his or her land;

20. To empower the Water Management Board to assess a fee for the use of water;

21. To confer any jurisdiction on the Water Management Board over any water right whose place of use is located outside the exterior boundaries of the Reservation;

22. To limit, diminish, modify, or enlarge any Party's adjudicatory or legislative jurisdiction except as expressly provided herein;

23. To constitute a waiver of an individual's right to object to the Compact during the Water Court decree process; or

24. To transfer, convert, or otherwise change the ownership or trust/fee status of land on the Reservation. Specifically, nothing in this Compact changes fee owned land to trust land or trust land to fee land, or in any way alters the ownership status of land within the exterior boundaries of the Flathead Indian Reservation.

C. Other Rights Reserved.

1. Nothing in this Compact is intended, nor shall be interpreted or applied, in any manner to alter, limit, or diminish the right of the Tribes to take all steps they deem necessary or prudent before any court or adjudicative forum, any legislature or legislative entity, or any State or Federal administrative agency, including but not limited to the Federal Energy Regulatory Commission, to protect any interests in Water Rights Arising Under State Law that the Tribes may acquire or seek to acquire and which are associated with the Federal Energy Regulatory Commission license for the Kerr Hydroelectric Project, FERC Project No. 5 (32 FERC # 61,070, July 17, 1985, as amended) or any other hydroelectric facility located on the Reservation subject to FERC jurisdiction.

2. The Parties expressly reserve all rights not granted, recognized or relinquished in this Compact, including but not limited to the right to the continued exercise by members of the Tribes of Tribal off-Reservation rights to hunt, fish, trap and gather food and other materials, as reserved in Article III of the Hellgate Treaty of July 16, 1855 (12 Stat. 975).

D. Obligations of the United States Contingent.

1. Notwithstanding any language contained herein and except as authorized under Federal law, the obligations of the United States under this Compact shall be contingent upon ratification and necessary authorization by Congress.

2. The expenditure or advance of any money or the performance of any work by the United States or the Tribes pursuant to this Compact which requires appropriation of money by Congress or by the Tribes is contingent on such appropriation being timely made.

3. The Tribes and the State recognize that this Compact has not been finally approved by the United States as of the date of execution by the Tribes or the State, and that ratification by the Tribes or by the State in no manner limits or restricts the discretion of the United States in the negotiation of all matters related to this

Compact.

E. Obligations of the State Contingent. The expenditure or advance of any money or the performance of any work by the State pursuant to this Compact that requires appropriation of money by the Montana Legislature or allotment of funds shall be contingent upon such appropriation or allotment.

ARTICLE VI - CONTRIBUTIONS TO SETTLEMENT

A. State Contribution to Settlement. The Parties agree that the State contribution to settlement shall be $55 million. The agreement to, expenditure, or advance of any State contribution which may require authorization and appropriation of money by the Montana Legislature or allotment of funds is contingent on such appropriation or allotment being made pursuant to Article V, Section 11(4) of the Montana Constitution. The Parties recognize that the amount and structure of the State funding is contingent on action of the Montana Legislature. If the Legislature appropriates funds in a manner inconsistent with the structure contemplated by the Parties in this section, the Parties agree to meet and confer to consider adjustments to the funding structure and priorities described in Articles IV.H.1.a and b above. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

1. The State Contribution to Settlement shall be allocated as follows:

a. $4 million for water measurement activities;

b. $4 million for improving on-farm efficiency;

c. $4 million for mitigating the loss of Stock Water deliveries from the FIIP;

d. $30 million to offset pumping costs associated with Compact implementation and related projects; and

e. $13 million to provide for aquatic and terrestrial habitat enhancement.

B. Federal Contribution to Settlement. The Parties agree that the Federal contribution to settlement shall be negotiated by the Tribes, the State, and the United States as part of the negotiations on the Federal legislation to ratify and effectuate the Compact.

ARTICLE VII - FINALITY

A. Ratification and Effectiveness of Compact.

1. The terms of the Compact may not be amended without the consent of all the Parties following the first ratification by any Party. After the Effective Date, no provision of the Compact shall be modified except as expressly provided in the Compact. Any amendment that is not expressly provided for in the Compact must be ratified in the same manner as the Compact; however, if the proposed amendment concerns non-monetary matters and does not affect the water rights of the Tribes determined in this Compact or other property held in

trust by the United States on behalf of the Tribes or Indians, the Secretary may ratify such amendment on behalf of the United States, as determined by Congress. The State and the Tribes will support provisions in the Federal legislation ratifying the Compact that delegates to the Secretary the authority to ratify such future amendments on behalf of the United States.

2. Notwithstanding any other provision in the Compact, the Tribes reserve the unilateral right to withdraw as a Party if:

a. Congress has not ratified this Compact and authorized appropriations for the Federal contribution to the settlement within four years from the date on which the ratification of the Compact by the Montana Legislature takes effect under State law. This is a continuing right until Congress ratifies the Compact;

b. Appropriations are not made in the manner contemplated by the Federal legislation ratifying this Compact;

c. The Parties do not reach agreement on the State contribution to settlement;

d. The State has not authorized appropriations for the State contribution to settlement within five years from the date the Compact is ratified by the United States; or

e. Appropriations are not made by the State in the manner contemplated by any agreement for contributions to settlement made pursuant to Article VI.A.

3. The Tribes may exercise their right to withdraw from the Compact under Article VII.A.2 by sending to the Governor of the State and to the Secretary by certified mail a resolution of the Tribal Council expressing the Tribes' intent to withdraw and specifying a reason for withdrawal and a withdrawal date not sooner than one hundred and twenty days from the date of the resolution. On the date designated in the resolution for Tribal withdrawal, the Compact shall become null and void without further action by any Party.

4. Notwithstanding any other provision in the Compact, the State reserves the unilateral right to withdraw as a Party to the Compact if:

a. Congress has not ratified this Compact within four years from the date on which the ratification of the Compact by the Montana Legislature takes effect under State law. This is a continuing right until Congress ratifies the Compact;

b. The Tribes have not ratified this Compact within five years from the date on which the ratification of the Compact by the Montana Legislature takes effect under State law;

c. Congress requires a State contribution to settlement that exceeds the contributions described in Article VI.A; or

d. Congress does not authorize and appropriate the Federal share of funding agreed to pursuant to Article VI.B.

5. The State may exercise its right to withdraw under Article VII.A.4 by sending to the Chair of the Tribal Council and to the Secretary a letter delivered by certified mail from the Governor of the State expressing the State's intent to withdraw and specifying a reason for withdrawal and a withdrawal date not sooner than one hundred and twenty days from the date of the letter. On the date designated in the letter for State withdrawal, the Compact shall become null and void without further action by any Party.

B. Incorporation into Decrees.

1. Within one hundred eighty (180) days of the date this Compact is ratified by the Tribes, the State, and the United States, whichever is latest, the Tribes, the State, and/or the United States shall file, in the general stream adjudication initiated by the State, pursuant to the provisions of 85-2-702(3), MCA, a motion for entry of the proposed decree attached hereto as Appendix 38 as the decree of the water rights held by the United States in trust for the Tribes, Tribal members, and the Allottees of the Tribes as well as those Water Rights Arising Under State Law set forth in Article III.D.4.a.i and Article III.D.5, of which the Tribes become co-owners pursuant to this Compact, and such other provisions of the Compact as are related to the determination of these water rights and their administration. If the Montana Water Court does not approve the proposed decree submitted with the motion within three years following the filing of the motion, the Compact shall be voidable by written agreement of the State and the Tribes. If the Montana Water Court approves the proposed decree within three years, but the decree is subsequently set aside by the Montana Water Court or on appeal, the Compact shall be voidable by written agreement of the State and the Tribes. Any effect of the failure of approval or setting aside of the decree on the approval, ratification, and confirmation by the United States shall be as provided by Congress. The Parties understand and agree that the submission of the Compact to a State court or courts, as provided for in the Compact, is solely to comply with the provisions of 85-2-702(3), MCA, and does not expand the jurisdiction of the State court or expand in any manner the waiver of sovereign immunity of either the United States or the Tribes in the McCarran Amendment, 43 U.S.C. 666, or other provision of Federal law.

2. Consistent with 3-7-224, MCA, setting forth the jurisdiction of the chief water judge, for the purposes of 85-2-702(3), MCA, the review by the Montana Water Court shall be limited to the contents of Appendix 38, and may extend to other sections of the Compact only to the extent that they relate to the determination of water rights and their administration. The final decree shall consist of the contents of Appendix 38, and such other information as may be required by 85-2-234, MCA. Nevertheless, pursuant to 85-2-702(3), MCA, the terms of the entire

Compact must be included in the preliminary decree without alteration for the purpose of notice.

C. Disposition of State and Federal Suits.

1. On issuance of a final decree by the Montana Water Court or its successor, and the completion of any direct appeals therefrom, or on expiration of the time for filing any such appeal:

a. the United States, the Tribes, and the State shall execute and file joint motions pursuant to Rule 41(a), Fed.R.Civ.P., to dismiss without prejudice any and all claims of the Tribes, Tribal members, and Allottees and any and all claims made by the United States for the benefit of the Tribes, Tribal members, and Allottees in United States v. Abell, No. CIV-79-33-M (filed April 5, 1979). The case may only be resumed if either the State or the Tribes exercise the rights each holds under Article VII.A;

b. the Tribes and the State shall execute and file joint motions to dismiss without prejudice the case entitled Confederated Salish and Kootenai Tribes v. Bud Clinch, Director, Montana Department of Natural Resources and Conservation, and the Montana Department of Natural Resources and Conservation, Montana First Judicial Court, County of Lewis and Clark, Cause No. BDV-2001-253, Montana First Judicial District Court, Lewis and Clark County, Montana;

c. The United States, the Tribes, and the State shall execute and file joint motions pursuant to Rule 41(a), Mont.R.Civ.P., to dismiss without prejudice any and all claims of the Tribes, Tribal members, and Allottees and any and all claims made by the United States for the benefit of the Tribes, Tribal members, and Allottees that have been filed in the Montana Water Court as contemplated by Article VII.D.2. The case adjudicating those claims may only be resumed if either the State or the Tribes exercise the rights each holds under Article VII.A.2 and 4; and

d. The Decree shall be filed by the Parties as a consent decree in Abell, or in Federal court as a new proceeding after the dismissal of Abell conditional on agreement by the Parties to seek the necessary State, Tribal, and Federal ratification of the Compact, if it is finally determined in a judgment binding on the State that the State courts lack jurisdiction over, or that the State court proceedings are inadequate to adjudicate some or all of the water rights asserted in Abell.

D. Settlement of Water Rights Claims.

1. The water rights and other benefits confirmed to the Tribes in this Compact are in full and final satisfaction of and are intended to be in replacement of and substitution for all claims to water or to the use of water by the Tribes, Tribal members, and Allottees and the United States on behalf of the Tribes, Tribal members, and Allottees existing on the Effective Date, except for any Appropriation Rights or Water Rights Arising Under

State Law held by the Tribes, their members, or Allottees as of the Effective Date or acquired thereafter, which shall be satisfied pursuant to their own terms.

2. The Tribes and United States will file all of their claims to water on and off of the Flathead Indian Reservation on or before July 1, 2015, pursuant to 85-2-702(3), MCA. Upon filing, the Tribes and United States will request that the Montana Department of Natural Resources and Conservation stay any action on such claims pending the occurrence of the following events:

a. The passage of an Act of Congress ratifying the Compact and authorizing appropriations for monetary settlement to the Tribes;

b. Approval by the Tribes of the Compact and the Act described in Article VII.D.2.a.

c. Issuance by the Montana Water Court of a final water right decree or decrees incorporating the water rights quantified pursuant to this Compact; and

d. All portions of the final Water Court decree or decrees survive exhaustion of all avenues of appeal.

3. Upon occurrence of these events, the waiver and dismissal described in Article VII.C.1.c and VII.D.3 shall be accomplished.

4. In consideration of the water rights and other benefits confirmed to the Tribes, Tribal members, and Allottees in this Compact, and of performance by the State and the United States of all actions required by this Compact, and on entry of a final order issuing the decree of the Tribal Water Right held in trust by the United States as quantified in this Compact and displayed in Appendix 38 and occurrence of the events set forth in Article VII.D.2, the Tribes and the United States as trustee for the Tribes, Tribal members, and Allottees shall waive, release, and relinquish any and all claims to water rights or to the use of water, and shall dismiss any such claims filed pursuant to Article VII.D.2, existing on the Effective Date.

E. Settlement of Tribal Claims Against the United States. Waiver of claims against the United States by the Tribes, their members and Allottees shall be as provided by Congress.

F. Binding Effect. After the Effective Date and the entry of a final decree by the Montana Water Court of the water rights quantified by this Compact, or if necessary the Federal court in Abell, the Compact's terms shall be binding on:

1. The State and any Person using, claiming or in any manner asserting any right under the authority of the State to the use of water in the State; provided that, the validity of consent, ratification, or authorization by the State is to be determined by State law;

2. The Tribes and any Person using, claiming or in any manner asserting any right to the use of the Tribal

Water Right, or any right arising under any doctrine of reserved or aboriginal water rights for the Tribes, Tribal members, and Allottees, or any rights arising under Tribal law; provided that, the validity of consent, ratification or authorization by the Tribes is to be determined by Tribal and, if applicable, Federal law; and

3. The United States and any Person using, claiming or in any manner asserting any right under the authority of the United States to the use of water in the State; provided that, the validity of consent, ratification or authorization by the United States is to be determined by Federal law.

ARTICLE VIII - LEGISLATION/DEFENSE OF COMPACT

A. State Legislation. The State and the Tribes agree to seek ratification of the Compact by the Montana Legislature and any additional State legislation necessary to effectuate the Compact.

B. Federal Legislation. The State and the Tribes agree to seek ratification of the Compact by Congress and any additional Federal legislation necessary to effectuate the Compact.

1. The State and the Tribes will support provisions in the Federal legislation ratifying this Compact that authorizes the United States District Court for the District of Montana in Missoula to review decisions of the Board and the MFWP authorized in the Compact; provided that, the sovereign immunity of the United States is not waived by such provision of the legislation.

2. The State and Tribes will support provisions in the Federal legislation ratifying this Compact that authorizes the Net Power Revenues distributions described in Article IV.H.3.

3. The State and the Tribes will support provisions in the Federal legislation ratifying this Compact that delegates to the Secretary the authority to ratify future amendments on behalf of the United States pursuant to Article VII.A.1.

C. Tribal Legislation. The State and the Tribes agree to seek ratification of the Compact by the Tribes and any Tribal legislation necessary to effectuate the Compact.

D. Defense of the Compact. The Parties agree to defend the Compact after its Effective Date from all challenges and attacks and in all proceedings pursuant to Article VII.B and C.

IN WITNESS WHEREOF the representatives of the Confederated Salish and Kootenai Tribes, the State of Montana, and the United States, have signed the Compact on the ____ day of ____, 201_.

NEW SECTION. **Section 2. Unitary administration and management ordinance.**

CHAPTER I

WATER RESOURCES CONSERVATION, DEVELOPMENT AND ADMINISTRATION

PART 1 - GENERAL PROVISIONS

1-1-101. Authority.

1. This Ordinance parallels legislation adopted by the Confederated Salish and Kootenai Tribes pursuant to Tribal approval of the Confederated Salish and Kootenai Tribes-Montana Compact and the Montana Water Use Act of 1973 to effectuate Unitary Administration and Management on the Flathead Indian Reservation.

2. This Ordinance and the parallel Tribal legislation are contingently effective; neither operates with the force and effect of law without the other. No modification by the Tribes or the State of Montana of these respective laws shall be effective within the exterior boundaries of the Reservation unless and until the other makes an analogous modification. No amendment of this Ordinance that may affect a use of the Tribal Water Right may be made without Secretarial approval.

3. Upon the Effective Date of the Compact, this Ordinance shall govern all water rights, whether derived from tribal, state or federal law, and shall control all aspects of water use, including all permitting of new uses, changes of existing uses, enforcement of water right calls and all aspects of enforcement within the exterior boundaries of the Flathead Indian Reservation. Any provision of Title 85, MCA, that is inconsistent with this Law of Administration is not applicable within the Reservation.

1-1-102. Reserved.

1-1-103. Reserved.

1-1-104. Definitions. Unless otherwise defined herein, capitalized terms used in this Ordinance shall have the meaning set forth in the Compact.

1. "Allottee" or "Allottees" means an owner of an interest in a tract of land held in trust by the United States which was allotted pursuant to the Act of April 23, 1904, 33 Stat. 302, as amended, or the Act of February 25, 1920, 41 Stat. 452, as amended.

2. "Appropriate" means to divert, impound, maintain an instream, inlake, inwetland or impoundment use, or withdraw a quantity of water for a beneficial use on the Flathead Indian Reservation under color of law.

3. "Appropriation" means the diversion, impoundment, maintenance of an instream, lake, Wetland, or impoundment use, or the withdrawal of a quantity of water for a Beneficial Use on the Flathead Indian Reservation under color of law.

4. "Appropriation Right" means a right to Appropriate water issued by the Water Management Board pursuant to the terms of the Compact and this Ordinance.

5. "Aquifer Injection" means the subsurface discharge of fluids into the ground by means of an Injection

Well.

6. "Appropriator" means a Person who Appropriates water.

7. "Beneficial Use" means a consumptive or non-consumptive use of water for the benefit of the Appropriator, other Persons, the Tribes, one or more Tribal members, or the general public, including but not limited to agricultural, stock water, domestic, fish and wildlife, cultural and religious practices, industrial, Instream Flow, irrigation, mining, Mitigation Water, municipal, power, recreational uses, and Wetlands purposes.

8. "Business" means a building or site where commercial work is carried on, including but not limited to a factory, store, or office.

9. "Change in Use" means an authorized change in the point of diversion, the place of use, the period of use, the purpose of use, or the place of storage of an Appropriation Right issued by the Water Management Board under the Compact and this Ordinance, or of an Existing Use. A changed water right retains the original priority date of that right.

10. "Compact" means that water rights settlement entered into by the Confederated Salish and Kootenai Tribes, the State of Montana, and the United States.

11. "Complainant" means one who files a Complaint.

12. "Complaint" means a written assertion of injury submitted to the Engineer pursuant to Section 3-1-102 of this Ordinance.

13. "Consumptive Use" means the amount of water used for a beneficial purpose, such as water transpired by growing vegetation, evaporated from soils or water surfaces, or incorporated into products, that does not return to the Groundwater or surface water source.

14. "Designee" means an individual selected by the Engineer to exercise, in regard to a particular application or objection, those powers assigned to the Engineer under Chapter II of this Ordinance. Any Staff is eligible to be selected as a Designee provided that he or she has not previously worked on the particular application or objection at issue.

15. "Developed Spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of Groundwater, from which Groundwater is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

16. "Development" means contiguous or closely grouped parcels of land under the same or affiliated ownership, including, but not limited to, housing subdivisions or any combination of business and residential units.

17. "DNRC" means the Montana Department of Natural Resources and Conservation, or any successor agency.

18. "Domestic Allowance" means an entitlement to use water issued to households and small businesses pursuant to the provisions of Section 2-2-117 of this Ordinance; Domestic Allowances include Individual Domestic Allowances, Shared Domestic Allowances, and Development Domestic Allowances.

19. "Domestic Use" means those water uses common to a household, including washing, drinking, bathing, waste disposal, cooling and heating, domestic animals, and garden and landscape irrigation. Domestic Use does not include the filling of ponds, pits, pit-dams or reservoirs.

20. "Effective Date" means the date on which the Compact is finally approved by the Tribes, by the State, and by the United States, and on which the Law of Administration has been enacted and taken effect as the law of the State and the Tribes, whichever date is latest.

21. "Emergency" means a situation that demands unusual or immediate action to prevent imminent injury to life, property, or the environment.

22. "Enclosed Storage" means a storage container fully enclosed to include a cistern or tank.

23. "Existing Use" means a use of water under color of Tribal, State or Federal law in existence as of the Effective Date, including uses in existence on that date that are eligible for either of the registration processes set forth in Sections 2-1-101 through 2-1-108 of this Ordinance; provided that any portion of a Water Right Arising Under State Law within the Reservation that is, at any point after the date the ratification of the Compact by the Montana Legislature takes effect under State law, voluntarily relinquished or is legally determined to be abandoned, relinquished, or have otherwise ceased to exist, shall be stricken from the relevant basin decree as a Water Right Arising Under State Law and be entitled to no further protection as such a right or as an Existing Use.

24. "Flathead Indian Irrigation Project" or "FIIP" means the irrigation project developed by the United States to irrigate lands within the Reservation pursuant to the Act of April 23, 1904, Public Law 58-159, 33 Stat. 302 (1904), and the Act of May 29, 1908, Public Law 60-156, 35 Stat. 441 (1908), and includes, but is not limited to, all lands, reservoirs, easements, rights-of-way, canals, ditches, laterals, or any other FIIP facilities (whether situated on or off the Reservation), head gates, pipelines, pumps, buildings, heavy equipment, vehicles, supplies, records or copies of records and all other physical, tangible objects, whether of real or personal property, used in the management and operation of the FIIP.

25. "FIIP Influence Area" means the lands influenced by the operations of the FIIP as identified on the

map attached to the Compact as Appendix 2.

26. "Flathead Indian Reservation" or "Reservation" means all land within the exterior boundaries of the Indian Reservation established under the July 16, 1855 Treaty of Hellgate (12 Stat. 975), notwithstanding the issuance of any patent, and including rights-of-way running through the Reservation.

27. "Flathead System Compact Water" means that portion of the Tribal Water Right consisting of 229,383 acre feet per year that the Tribes may withdraw from the Flathead River or Flathead Lake, which includes up to 90,000 acre feet per year stored in Hungry Horse Reservoir, with a maximum total volume consumed of 128,158 acre feet per year.

28. "Groundwater" means any water that is beneath the surface of the earth.

29. "Groundwater Management Area" means an area designated and managed under Section 1-1-109 of this Ordinance.

30. "Heating/Cooling Exchange Well" means a Well for the purpose and with the attributes set forth in Section 2-2-119(1) of this Ordinance.

31. "Home" means a house, apartment, or other shelter that is a permanent or temporary residence of a Person, family, or household.

32. "Illegal" or "Illegally" means, as it pertains to the use of water, to Appropriate water not pursuant to an Appropriation Right or Existing Use.

33. "Injection Well" means a Well utilized for injecting fluids or gases into geologic materials. Open pits, ponds, or excavations are not considered Injection Wells.

34. "Instream Flow" means a stream flow retained in a watercourse to benefit the aquatic environment. Instream Flow may include Natural Flow or streamflow affected by regulation, diversion, or other modification. A water right for Instream Flow purposes is quantified for a stream reach and measured for enforcement purposes at a specified point.

35. "Livestock" means cattle, bison, sheep, swine, horses, mules, goats, or other animals specifically raised and used for food or fiber or as a beast of burden.

36. "Mitigation" means the reallocation of surface water or Groundwater through a Change in Use or other means to offset adverse effect resulting from Net Depletion by any proposed new Appropriation.

37. "Mitigation Plan" means a plan as developed by an applicant to provide Mitigation.

38. "NRD" means the Confederated Salish and Kootenai Tribes' Natural Resources Department.

39. "Natural Wetland" means a Wetland area that is maintained with a natural surface water source,

natural Groundwater source or a combination of natural surface water and natural Groundwater without any artificial means of diversion, impoundment, withdrawal, excavation, or other artificial means of control.

40. "Net Depletion" means the calculated volume, rate, timing, and location of reductions to a water source resulting from a proposed new Appropriation that are not offset by the corresponding accretions to that source caused by the proposed new Appropriation.

41. "Non-consumptive Use" means any beneficial use of water that does not meet the definition of consumptive use.

42. "Other Instream Flows" means the Tribal instream flow water rights for stream reaches described in Article III.C.1.d.iii of the Compact.

43. "Office of the Engineer" means the Engineer and Staff, acting in their official capacities.

44. "Person" means an individual or any other entity, public or private, including the Tribes, the State, and the United States, and all officers, agents and departments of each sovereign.

45. "Pits, Pit-dams, Constructed Ponds, or Reservoirs" refer to bodies of water that are created by man-made means and which store water for beneficial use.

46. "Project Manager" means the person or team of persons hired by the Project Operator to operate and manage the FIIP in accordance with its direction, this and other applicable agreements, and applicable law, including the Compact.

47. "Project Operator" means that entity with the legal authority and responsibility to operate the Flathead Indian Irrigation Project.

48. "Public Water Supply System" means a system for the provision of water for human consumption that has at least 15 service connections or that regularly serves at least 25 Persons daily for any 60 or more days in a calendar year.

49. "Publish" or "Publication" means, unless otherwise designated, the printing of an announcement of document availability, or the text of the document itself, in a newspaper of general circulation on the Reservation and in the Tribal newspaper and posting on the Water Management Board's website.

50. "Redundant Well" means a Well to provide a backup source of water for a Public Water Supply System.

51. "Restored Natural Wetland" means a Wetland area that, upon restoration, shall be maintained with a natural surface water source, natural Groundwater source, or a combination of natural surface water and natural Groundwater without any artificial means of diversion, impoundment, withdrawal, excavation, or other artificial

means of control.

52. "Secretary" means the Secretary of the United States Department of the Interior or the Secretary's duly assigned representative.

53. "Shall" means a mandatory and not a discretionary act.

54. "Shared Well" means a single Well that is physically manifold to multiple homes and/or businesses and is cooperatively used pursuant to a Shared Well Agreement.

55. "Shared Well Agreement" means a legally binding document that stipulates the manner in which a Shared Well is jointly used between or among all Homes or Businesses connected to the well; to be valid, it must be signed by representatives for each Person having a possessory interest in each individual Home or Business connected to a Shared Well.

56. "Spring" means a perennial hydrologic occurrence of water involving the natural flow of water originating from beneath the land surface and arising to the surface of the ground.

57. "Staff" means the employees, contractors and others assigned to or engaged by the Board or the Engineer to assist or facilitate the Engineer in carrying out the duties assigned to the Engineer by the Compact and this Ordinance, and by the Board pursuant to the same.

58. "Stock Tank" means a 30 to 1500 gallon tank used to provide drinking water for Livestock that is equipped with a water level regulator that shuts off supply to keep the Stock Tank from overflowing.

59. "Substitute Well" means a Well that replaces an existing Well which is to be abandoned.

60. "Temporary Emergency Appropriation" means the temporary beneficial use of water necessary to protect lives, property, or the environment, by reason of fire, storm, earthquake or other disaster, or unforeseen combination of circumstances which call for immediate action. An appropriation made necessary due to drought conditions is not a temporary emergency appropriation.

61. "Temporary Groundwater Management Area" means an area established pursuant to Section 1-1-109(10) of this Ordinance.

62. "Tribal Member" means a Person who is lawfully enrolled by and whose name appears on the official enrollment list of the Confederated Salish and Kootenai Tribes.

63. "Tribal Water Right" means the water rights of the Confederated Salish and Kootenai Tribes, including any Tribal member or Allottee, that arise under Federal law, as set forth in Article III.A, Article III.C.1.a through j, Article III.C.1.k.i, Article III.C.1.l.i, Article III.D.1 through 3, and Article III.D.7 and 8 of the Compact. The term "Tribal Water Right" also includes those rights identified in Article III.H of the Compact that are appurtenant to

lands taken into trust by the United States on behalf of the Tribes.

64. "Tribes" means the Confederated Salish and Kootenai Tribes of the Flathead Reservation, and all officers, agencies, and departments thereof.

65. "Waste" or "Wasting" means the unreasonable loss of water resulting from the design, construction, operation or maintenance of a water diversion, storage or distribution facility, Well, Developed Spring, or the application of water to anything but a beneficial use.

66. "Water Engineer" or "Engineer" means the Person satisfying the criteria in Section 1-2-109 of this Ordinance employed by the Water Management Board pursuant to Article IV.I.5.c of the Compact to exercise the powers and duties of the Water Engineer as set forth in the Compact and this Ordinance.

67. "Water Management Board" or "Board" means the board created by Article IV.I of the Compact and vested with the responsibilities set forth in the Compact and in Tribal and State law for the administration of water within the Reservation.

68. "Water Rights Arising Under State Law" means those valid water rights Arising Under State Law existing as of the Effective Date and not subsequently relinquished or abandoned, as those rights are: decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permitted by the DNRC; exempted from filing in the Montana general stream adjudication pursuant to 85-2-222, MCA; or excepted from the permitting process pursuant to 85-2-306, MCA.

69. "Well" means any artificial opening or excavation in the ground, however made, by which Groundwater is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

70. "Well Log Report" means DNRC Form No. 603 (see ARM 36.12.102), or any successor reporting form and requirement promulgated in State law.

71. "Well Shaft Casing" means an impervious durable pipe placed in a well or Developed Spring to prevent the walls from caving, to seal off surface drainage, or undesirable water, gas, or other fluids to prevent their entering the well, and to prevent the Waste of Groundwater.

72. "Wetland" means an area that is inundated or saturated by surface water or Groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

73. "Wetland Quantified Appropriation Right" means an Appropriation Right issued for a Wetlands

purpose that utilizes any man-made diversions, impoundment, withdrawals, excavations, or other artificial means for the purposes of appropriation for either all or a portion of a Wetland.

74. "Wetland Protective Appropriation Right" means an Appropriation Right issued for either a Natural Wetland or Restored Natural Wetland.

75. "Works" means all property, real or personal, necessary or convenient to the appropriation, conservation, storage, diversion, distribution, development, screening and utilization of water.

1-1-105. Measurement of Water. Upon the effective date of this Ordinance, legal standards of measurement of water within the Flathead Reservation shall be as follows:

1. Flow rates shall be measured in cubic feet per second, unless otherwise provided herein. Where documentary evidence of an existing use is expressed in gallons per minute, 448.8 gallons per minute shall be considered equivalent to a flow of one cubic foot per second. Where documentary evidence of an existing use is expressed in statutory or miner's inches, 40 statutory or miner's inches shall be considered equivalent to a flow of one cubic foot per second.

2. Volumes of water shall be measured in acre-feet, unless otherwise provided herein. One acre-foot shall be considered equivalent to a volume of 43,560 cubic feet. One cubic foot shall be considered equivalent to a volume of 7.48 gallons.

1-1-106. Measurement of Time. Whenever in this Ordinance an action is required to be performed within a certain number of days, the time for completion of the act shall be measured in calendar days unless the last day falls on a Friday, Saturday, Sunday, or Tribal, State or Federal legal holiday, in which case the time for performance is extended to the next subsequent business weekday.

1-1-107. Appropriation Rights Allowed.

1. The following Appropriation Rights or Changes in Use may be authorized by the Board pursuant to the Compact and this Ordinance:

a. Appropriation Rights for Groundwater appropriations for Redundant or Substitute Wells as set forth in Section 2-2-115 of this Ordinance.

b. Appropriation Rights for Stock Water Allowances as set forth in Section 2-2-116 of this Ordinance.

c. Appropriation Rights for Domestic Allowances as set forth in Section 2-2-117 of this Ordinance.

d. Appropriation Rights for uses of Flathead System Compact Water as set forth in Section 2-2-118 of this Ordinance.

e. Appropriation Rights for non-consumptive geothermal heating or cooling exchange Wells as set forth

in Section 2-2-119 of this Ordinance.

f. Appropriation Rights for Temporary Emergency Appropriations as set forth in Section 2-2-120 of this Ordinance.

g. Appropriation Rights or Change in Use authorizations for Wetlands as set forth in Sections 2-2-123 and 2-2-124 of this Ordinance.

h. Appropriation Rights for Non-consumptive Uses, including, but not limited to, hydropower generation and not including flow-through ponds.

i. Appropriation Rights for which adverse effects to existing Appropriators are offset by Mitigation.

j. Changes in Use of all Appropriation Rights or Existing Uses except for those Appropriation Rights authorized under subsections (1)(a), (1)(b), (1)(c), (1)(e), (1)(f), (1)(k), or (1)(l) of this Section or those for Existing Uses exempt from the permitting requirements of 85-2-306, MCA, or from the claim filing requirements of 85-2-221, MCA, as set forth in 85-2-222, MCA; provided that a use authorized under subsection (1)(h) may not be changed from a Non-consumptive Use to a consumptive use.

k. Appropriation Rights to Appropriate surface water to conduct response actions related to natural resource restoration required for:

i. remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.;

ii. aquatic resource activities carried out in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387; or

iii. remedial actions taken pursuant to the Remedial Action Upon Release of Hazardous Substance Act, Title 75, chapter 10, part 7, MCA.

No Appropriation Rights issued pursuant to this subsection may be used for dilution.

l. Appropriation Rights for uses of surface water for or by a municipality or regional distribution system.

m. Appropriation Rights for new uses of the Tribal Water Right by the Tribes, Tribal Members, or Allottees, provided that any such new uses be sourced from:

i. Flathead System Compact Water; or

ii. another source, provided that any adverse effects to existing Appropriators caused by the Net Depletion of the new Appropriation Right must be offset by Mitigation pursuant to Section 1-1-112 of this Ordinance.

2. Other than those Appropriation Rights set forth in subsection (1) of this Section, the Board may not

grant an Appropriation Right or other authorization to Appropriate surface water or Groundwater within the exterior boundaries of the Flathead Indian Reservation.

1-1-108. Reservation Water Rights Database. The Board shall cause all Appropriation Rights and Changes in Use authorized by the Board, including those uses registered pursuant to the provisions of Sections 2-1-101 through 2-1-107 of this Ordinance, to be entered into the DNRC water rights database in a format agreed to by the Board and the DNRC.

1-1-109. Groundwater Management Areas. The Board may designate, modify, or repeal either permanent or Temporary Groundwater Management Areas as provided in this part.

1. Each designation of a Groundwater Management Area shall identify the need for the special management, the boundaries of the area, the water resources targeted for special management, and the specific restrictions that will apply in the Groundwater Management Area.

2. The designation, modification, or repeal of a Groundwater Management Area may be initiated by submission of a correct and complete petition by:

a. the Tribes, the State, or the United States;

b. a local public health agency;

c. a municipality, county, or conservation district; or

d. at least one-third of the water rights holders in a proposed Groundwater Management Area.

3. A correct and complete petition shall:

a. be in a form prescribed by the Board;

b. contain facts and analysis prepared by a hydrologist, hydrogeologist, qualified scientist, or a qualified licensed professional engineer demonstrating the existence of one or more of the criteria set forth in subsection (8) are met; and

c. describe proposed measures, if any, needed to mitigate effects of the criteria identified in subsection (8) of this Section; and that are alleged in the petition or describe the rationale as to why a Groundwater Management Area should be repealed or modified.

4. Upon receipt of a completed petition complying with subsection (3) of this Section, the Office of the Engineer shall date stamp the petition.

5. Office of the Engineer review:

a. within 180 days of the date of receipt of the petition pursuant to subsection (4) of this Section, the Office of the Engineer shall:

i. determine in writing that the petition is correct and complete; or

ii. notify the petitioner of any defects in a petition, with an explanation in writing of the defect(s).

b. any petition that is returned pursuant to subsection (5)(a)(ii) of this Section and not corrected within 90 days from the date of return shall be deemed terminated.

c. if the Office of the Engineer does not notify the petitioner pursuant to subsection (5)(a) of this Section, the petition shall be treated as correct and complete.

6. Board review:

a. within 60 days after a petition is determined to be correct and complete, the Board shall:

i. deny the petition in writing in whole or part, stating the reasons for denial;

ii. inform the petitioner in writing that the Board will study the information presented in the petition for a period not to exceed 90 days before denying or proceeding with the petition; or

iii. publish notice of the Board's consideration of action concerning a permanent or Temporary Groundwater Management Area pursuant to subsection (8) of this Section.

b. failure of the Board to act under subsection (6)(a) of this Section shall be deemed a denial of the petition.

7. If the Board determines that a correct and complete petition contains sufficient information to warrant the Board granting the petition, the Board shall proceed to hear the petition. The Board shall provide public notice of the hearing by:

a. publishing a notice at least once each week for 3 successive weeks, with the first notice not less than 30 days before the date of the hearing in a newspaper of general circulation on the Reservation;

b. serving by mail a copy of the notice, not less than 30 days before the hearing, upon each Person or public agency known from an examination of the records of the Board to be a water right holder within the proposed or existing Groundwater Management Area;

c. serving by mail a copy of the notice upon any other Person, including Tribal, State or federal agencies, that the Board knows to be interested in or affected by the proposed designation, modification, or repeal of a Groundwater Management Area.

d. the notice under subsections (7)(a) through (7)(c) must include a summary of the basis for the proposed action. Publication and mailing of the notice as prescribed in this Section, when completed, is considered to be sufficient notice of the hearing to all interested parties.

e. the Board shall make available to the public on its website a complete copy of the petition or request

to designate, modify, or repeal either permanent or Temporary Groundwater Management Areas.

8. The Board may designate a permanent Groundwater Management Area if it finds by a preponderance of the evidence that any of the following criteria have been met:

a. current or projected reductions of recharge to the aquifer or aquifers within the boundaries of the proposed permanent Groundwater Management Area will cause Groundwater levels to decline to the extent that water rights holders cannot reasonably exercise their water rights;

b. current or projected Groundwater withdrawals from the aquifer or aquifers in the boundaries of the proposed Groundwater Management Area have reduced or will reduce Groundwater levels or surface water availability necessary for water rights holders to reasonably exercise their water rights;

c. current or projected Groundwater withdrawals from the aquifer or aquifers in the proposed permanent Groundwater Management Area have impaired or will impair Groundwater quality necessary for water right holders to reasonably exercise their water rights based on relevant water quality standards;

d. Groundwater within the proposed permanent Groundwater Management Area is not suitable for any beneficial use; or

e. public health, safety, or welfare is or will become at risk.

9. Monitoring and studies:

a. if the Board finds that sufficient facts, including monitoring information, are not available to designate a permanent Groundwater Management Area, the Board may designate a Temporary Groundwater Management Area to allow studies to obtain the facts needed to:

i. correct deficiencies that the Board identifies in a petition for a permanent Groundwater Management Area;

ii. determine the extent to which the criteria identified in subsection (8) are met or not met;

iii. determine appropriate control measures to implement to designate a permanent Groundwater Management Area.

b. the Board shall set the length of time that the Temporary Groundwater Management Area shall be in effect. The term of a Temporary Groundwater Management Area may be extended by the Board, but may not exceed a total of 6 years.

c. the Board shall determine the responsibility for funding the costs associated with subsection (9)(a). Any person on whom a funding responsibility is placed by the Board pursuant to this subsection may appeal that determination to a Court of Competent Jurisdiction, which shall review the determination for an abuse of

discretion.

d. prior to designating a Temporary Groundwater Management Area, the Board shall provide notice and the opportunity for public hearing pursuant to the notice provisions of subsection (7) of this Section.

e. a Temporary Groundwater Management Area designation is for the purpose of monitoring and study and shall not include the control provisions set forth in subsection (10) of this Section, other than measurement, water quality testing, and reporting.

f. prior to expiration of a Temporary Groundwater Management Area, and subject to the limitations of subsection (9)(b) of this Section, the Board may amend or repeal the establishment of the Temporary Groundwater Management Area, or may designate a permanent Groundwater Management Area under this Section.

10. A permanent Groundwater Management Area may include, but is not limited to, one or more of the following provisions:

a. closing the permanent Groundwater Management Area to further appropriation of surface water and/or Groundwater;

b. restricting the development of future surface water and/or Groundwater appropriations within the permanent Groundwater Management Area;

c. prohibiting or restricting the issuance of Stock Water Allowances pursuant to Section 2-2-116 of this Ordinance;

d. prohibiting or restricting the issuance of Domestic Allowances pursuant to Section 2-2-117 of this Ordinance;

e. requiring measurement and reporting of future surface water or Groundwater appropriations within the permanent Groundwater Management Area;

f. requiring water conservation measures within the permanent Groundwater Management Area;

g. requiring mitigation of Groundwater withdrawals within the permanent Groundwater Management Area;

h. reporting data to the Board within the permanent Groundwater Management Area; and

i. other provisions that the Board determines are appropriate and adopts.

11. The Board, upon petition, may modify or repeal a Groundwater Management Area. Any petition seeking the modification or repeal of a permanent Groundwater Management Area must demonstrate by a preponderance of the evidence that current or projected recharge to the aquifer or aquifers or changes to current or projected Groundwater withdrawals from the aquifer or aquifers in the boundaries of an existing Groundwater

Management Area justify modification or repeal of that Groundwater Management Area.

12. Appeal from any final decision of the Board concerning the designation, modification or repeal of any permanent Groundwater Management Area pursuant to this Section shall be as set forth in Section 2-2-112 of this Ordinance.

13. If the Board determines that it is appropriate for a Groundwater Management Area identified pursuant to this section to extend to an area adjacent to but outside the boundaries of the Reservation, the Board, through the Office of the Engineer, may petition the DNRC, pursuant to 85-2-506(2)(c)(i), MCA, to designate a Controlled Groundwater Area in that adjacent area. Designation or modification by the DNRC of a Controlled Groundwater Area in any such adjacent area shall be governed by the procedures set forth in 85-2-506, MCA.

1-1-110. Standards for Applications for Appropriation Rights and Changes in Use. For any application for an Appropriation Right or Change in Use that is not one of the categories of Appropriation Right identified in Sections 1-1-112(1) or 2-2-118 of this Ordinance, in addition to whatever information is required by specific provisions of the Ordinance, all applications for Appropriation Rights and Changes in Use must include:

1. An identification of the proposed beneficial use.

2. An identification of the source of water supply.

3. A project description, including an identification of any water right(s) to be changed to a new use, if applicable.

4. A legal description of the point of diversion and the place of use.

5. The monthly volume(s) and flow rate(s) of the water supply to be diverted, withdrawn, or impounded, and the monthly volume(s) to be consumed; however the Office of the Engineer may require a more frequent quantification time step.

6. The monthly historic diverted, withdrawn, or impounded volume(s) and flow rate(s) and the historically consumed volume(s) of the water right(s) to be changed to a new use, if applicable; however, the Office of the Engineer may require a more frequent quantification time step.

7. The calculations, references and methodologies used to determine the volume(s) and flow rate(s) in subsections (5) and (6) above.

8. Identification of physical water availability and existing legal demands on the source of supply of water.

9. Evidence that the proposed means of diversion, construction, and operation of the appropriation Works are adequate.

10. Evidence of possessory interest or the written consent of the person with the possessory interest in

the property where the water is to be put to beneficial use, diverted, conveyed, impounded, stored, transported, withdrawn, used, and distributed.

11. Information showing that the water quantity or quality of an Appropriator will not be adversely affected, if applicable.

12. A United States Geological Survey (USGS) quadrangle map or United States Department of Agriculture (USDA) aerial photo must be included with the application.

a. The following items shall be clearly identified on the map:

(1) North arrow;

(2) Scale bar;

(3) Section corners and numbers;

(4) Township and range numbers;

(5) Property lines and ownership;

(6) Source(s);

(7) Point(s) of diversion;

(8) Means of conveyance;

(9) Place(s) of use;

(10) Place(s) of storage, if applicable:

(11) Surface water features;

(12) Measurement and instrument locations associated with the application; and

(13) The place(s) of use of all associated and supplemental water rights.

b. If the application is for a Change in Use, the site map shall also show the historic point(s) of diversion, place(s) of use, and place(s) of storage, as applicable.

c. Additional maps shall be submitted if the information on one map cannot convey the required information clearly and shall be of the same scale so the maps can be overlain.

1-1-111. Groundwater Diversion Standards

1. Wells:

a. Persons that drill, make, or construct Wells, including monitoring Wells, on the Reservation shall comply with Title 37 Chapter 43, MCA, and ARM 36 Chapter 21 licensing, conduct, and regulatory requirements, or any successor provisions promulgated in State law.

b. All Well construction on the Reservation shall meet the standards set forth in ARM 36 Chapter 21, or

any successor provisions promulgated in State law.

c. Construction and operations of all Wells must comply with all applicable federal, State, Tribal, and local environmental regulations.

2. Developed Springs:

a. All Developed Spring collection components, including but not limited to infiltration galleries, infiltration basins, and French drains, shall be installed and buried under the surface of the ground.

b. All means of storage and conveyance, including but not limited to supply pipes, cisterns, and pump housings, shall be sealed and made impervious to water and designed in a manner that protects the source from backflow and surface contamination.

c. Open pits, ponds, or excavations shall not be used as a means of diversion for Developed Springs.

d. Construction and operation of all Developed Springs must comply with all applicable federal, State, Tribal, and local environmental regulations.

3. Aquifer Injection and Injection Wells are not allowed except when used exclusively for Heating/Cooling Exchange Wells.

1-1-112. Mitigation

1. Unless any provision of a Groundwater Management Area established pursuant to Section 1-1-109 of this Ordinance specifically requires Mitigation for any of the following categories of Appropriation Rights, Mitigation is not required for Appropriation of:

a. Redundant or Substitute Wells pursuant to Section 2-2-115 of this Ordinance;

b. Stock Water Allowances pursuant to Section 2-2-116 of this Ordinance;

c. Domestic Allowances pursuant to Section 2-2-117 of this Ordinance;

d. Heating/Cooling Exchange Wells pursuant Section to 2-2-119 of this Ordinance;

e. Temporary Emergency Appropriations pursuant to Section 2-2-120 of this Ordinance; or

f. Short-term uses of an Appropriation Right pursuant to Sections 2-2-121 and 2-2-122 of this Ordinance.

2. Mitigation is not required for Appropriation of Flathead System Compact Water Pursuant to 2-2-118 of this Ordinance.

3. Any Appropriation Right that results in a Net Depletion of either surface water or Groundwater shall offset the entire Net Depletion that results in adverse effect to any Appropriator through the use of Mitigation pursuant to a Mitigation Plan.

4. An adverse effect to a Wetland Protective Appropriation Right recognized in Article III.C.1.f of the

Compact or a Wetland Protective Appropriation Right issued pursuant to Section 2-2-123 of this Ordinance that requires Mitigation shall include, but is not limited to, a water supply alteration that would cause:

a. reductions of the Wetland boundary in excess of the normal range of variability in water; or

b. unnatural Wetland plant community change.

5. A Mitigation Plan must include:

a. a plan of use for the proposed Appropriation Right for which the Mitigation Plan is required;

b. an identification of the location, volume, and timing (by monthly or more frequent time step as determined by the Engineer) of the adverse effect to be mitigated;

c. if necessary, evidence that an application for a Change in Use has been submitted;

d. the amount of water reallocated through exchange or substitution that is required to mitigate the adverse effect;

e. evidence that the water for Mitigation is legally and physically available;

f. evidence of how the Mitigation Plan will offset the Net Depletion in a manner that will offset any adverse effect to any Appropriator; and

g. evidence that the necessary water quality permits, if any, have been applied for pursuant to the Tribal Water Quality Management Ordinance.

6. No applicant for an Appropriation Right shall be required to provide more Mitigation than the quantity needed to offset the adverse effects of that proposed new Appropriation Right on any Appropriator.

7. Compliance with a Mitigation Plan and proof of any water quality permit(s) issued pursuant to the Tribal Water Quality Management Ordinance, if applicable, must be included as a written condition on any Appropriation Right or Change in Use authorization that is conditioned on Mitigation.

8. If compliance with a Mitigation Plan or any applicable water quality permit(s) issued pursuant to the Tribal Water Quality Management Ordinance ceases or terminates, the holder of the Appropriation Right conditioned on compliance with the Mitigation Plan shall immediately notify the Office of the Engineer, and use of the Appropriation Right shall be suspended immediately until a new Mitigation Plan is approved and implemented pursuant to this Ordinance.

1-1-113. Codification, Severability and Defense.

1. The provisions of this Ordinance are severable, and a finding of invalidity of one or more provisions hereof shall not affect the validity of the remaining provisions.

2. This Ordinance is intended to function in conjunction with the legislation adopted by the Confederated

Salish and Kootenai Tribes pursuant to Tribal approval of the Confederated Salish and Kootenai Tribes-Montana Compact and the Montana Water Use Act of 1973 to effectuate Unitary administration and Management on the Flathead Indian Reservation. Should those portions of the parallel Tribal Legislation be amended by subsequent legislation without contemporaneous and materially identical State amendment to this Ordinance, this Ordinance shall govern the use of waters within the Reservation, irrespective of the amended provisions of Tribal law, until such time as the laws of the Tribes and the State are rendered mutually consistent. Similarly, should this Ordinance be amended without contemporaneous and materially identical amendment of the provisions adopted into Tribal law, those pre-existing provisions of Tribal law shall govern the use of waters within the Reservation, irrespective of the amended provisions, until such time as the laws of the Tribes and the State are rendered mutually consistent.

3. Any amendment to this Ordinance that is approved by the Tribes, the State and the Secretary is pursuant to, and shall not be deemed a modification of, the Compact.

4. The State adopts this Ordinance only after concluding its provisions are lawful. Should the legality of the Ordinance, or parallel Tribal legislation, or any provision thereof be challenged in any court, the parties shall use their best effort jointly to defend the enforceability of the Ordinance, the parallel Tribal legislation and each of the respective provisions.

1-1-114. Effective Date. This Ordinance and each provision hereof according to its terms shall take on the Effective Date of the Compact.

PART 2 - UNITARY ADMINISTRATION AND MANAGEMENT

1-2-101. Purpose. The purpose of this Part is to establish the processes applicable to all surface and Groundwater use within the exterior boundaries of the Flathead Indian Reservation.

1-2-102. Establishment and Composition of the Water Management Board. Pursuant to Article IV.I of the Compact, the Water Management Board is established.

1-2-103. Qualifications of Board Members. As set forth in Article IV.I.2.f of the Compact:

1. A Board member shall be over 18 years of age.

2. A Board member shall be a Reservation resident, which means, for the purposes of filling a position on the Board, an individual who:

a. does business within Flathead Indian Reservation boundaries,

b. is domiciled within Flathead Indian Reservation boundaries, or

c. owns and maintains a seasonal residence within Flathead Indian Reservation boundaries.

3. No elected official of the State of Montana, or any political subdivision thereof, or of the United States, or of the Tribes is eligible for nomination to the Board while holding such elective office. However, a nominee for Board membership shall not be disqualified by reason of the fact that he or she is an employee or contractor of the State of Montana or any political subdivision thereof, or of the Tribes, or of the United States.

4. A Board member shall have education and experience in one or more of the following fields: natural resources management, public administration, agriculture, engineering, commerce or finance, hydrology, biological sciences, water law or water policy.

5. No Board member may vote on any application or appeal that the member participated in personally and substantially in any non-Board capacity.

1-2-104. Public Meetings and Records. As set forth in Article IV.I.7 of the Compact:

1. Notwithstanding any other provisions of law, the Board is a public agency for purposes of the applicability of State and Tribal right to know laws.

2. All regular and special meetings of the Board, including all hearings conducted by the Office of the Engineer or the Board pursuant to the provisions of Chapter 2 Part 2, and Chapter 3 of this Ordinance, shall be open to the observation of the general public pursuant to State and Tribal open meeting laws. Where there is a conflict of laws, the law that provides for greater openness to the public applies.

3. Where no more specific notice provisions are set forth in this Ordinance, notice of any meeting, including a draft agenda, shall be provided to the public in a manner and on a timeframe consistent with the criteria set forth in State and Tribal law. Where there is a conflict of laws, the law that provides for earlier notice shall apply.

4. The Board shall keep the following records:

a. minutes of all meetings;

b. recordings of all hearings conducted by the Board or the Office of the Engineer pursuant to the provisions of Chapter 2 Part 2, and Chapter 3 of this Ordinance;

c. all documents filed with or generated by the Board or the Office of the Engineer pursuant to this Ordinance;

d. any other records required by applicable provisions of State or Tribal law, provided that if there is a conflict of laws, the law that provides for more expansive record retention shall apply.

5. All Board records are public records and shall be made available to the public for inspection under such reasonable terms and conditions as the Board shall establish.

1-2-105. Compensation and Expenses of the Board. As set forth in Article IV.I.2.h of the Compact, each Board member shall receive such compensation for services and reimbursement for expenses for attendance at Board meetings as shall be fixed by the State and the Tribal Council for the Board members appointed by the same. The compensation for the fifth Board member shall set jointly by the State and the Tribal Council. The compensation and expenses of the Federal ex officio member shall be paid by the United States.

1-2-106, Quorum and Voting of the Board. As set forth in Article IV.I.3 of the Compact, four voting members of the Board shall constitute a quorum. No Board action may be voted upon in the absence of a quorum. All Board decisions shall be by affirmative vote of a majority of the Board. If a proposal put to a vote of a quorum of Board members ends in a tie vote, the proposal, or matter under consideration is deemed disapproved or denied.

1-2-107. Powers and Duties of the Board.

1. The Board shall have those powers and duties set forth in Article IV.I.4 and 5 of the Compact and in this Ordinance, including those powers necessary and proper to carry out all Board responsibilities as set forth in the Compact and this Ordinance.

2. As set forth in the Compact, the Board shall have exclusive jurisdiction to resolve any controversy as between the Parties or between or among holders of Appropriation Rights and Existing Uses on the Reservation over the meaning and interpretation of the Compact and this Ordinance.

1-2-108. Technical Assistance to the Board and the Engineer. The NRD and the DNRC shall, within the limits of their respective expertise and resources, and when so requested by the Board or the Office of the Engineer, collect, compile, and analyze information related to waters of the Reservation, their use, and the Works associated with their use, and produce reports and provide technical assistance and advice to the Board or the Office of the Engineer.

1-2-109. Qualifications of the Water Engineer.

1. The Water Engineer shall be a professional in one or more of the following water resources or management related fields:

a. water resources management;

b. hydrology;

c. hydrogeology;

d. environmental science;

e. business or public administration;

f. biological science;

g. civil engineering;

h. environmental engineering; or

i. law.

2. The Water Engineer shall have a minimum of a bachelor's degree with 10 years of increasingly responsible experience, including three years of management experience, or a master's degree with seven years of increasingly responsible experience, including three years of management experience, or an appropriate combination of education and experience.

3. The Water Engineer shall have the skill to deal with a diverse and sometimes contentious public.

4. The Water Engineer shall have the ability to:

a. successfully manage the water resources staff;

b. provide technical assistance to the Board; and

c. act as a hearings officer and document decisions and orders in writing.

1-2-110. Duties of the Engineer. The Engineer shall be an employee of the Board and shall exercise the duties set forth in the Compact and this Ordinance, and as assigned by the Board pursuant to the Compact and this Ordinance. These duties include, but are not limited to:

1. The administration of water rights on the Reservation, and the enforcement of the terms of this Ordinance and the conditions of all Appropriation Rights, determinations, orders, regulations, plans, policies, guidelines, and other actions taken by the Engineer or the Board, pursuant to the Compact and this Ordinance;

2. Coordination with the Project Manager, as far as practicable, of the operations of the FIIP with the administration and enforcement of water rights outside of the FIIP;

3. The supervision and management of Staff; and

4. The development and submission to the Board of budget requests for approval by the Board and forwarding to the Tribes and State for the purpose of securing necessary appropriations.

1-2-111. Immunity from Suit. Members of the Board, the Engineer, any Designee, any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance, and any Staff shall be immune from suit for damages arising from the lawful discharge of an official duty associated with the carrying out of powers and duties set forth in the Compact or this Ordinance relating to the authorization, administration or enforcement of water rights on the Reservation.

1-2-112. Filing Fees. A filing fee shall be paid at the time an application is filed with the Office of the

Engineer under Section 2-1-107, 2-2-104, 2-2-115, 2-2-116, 2-2-117, 2-2-118, 2-2-119, 2-2-123, or 2-2-124 of this Ordinance. The amount of the fee shall be the same as the fee charged by DNRC for the same type of application under State law, as those fees may be modified from time to time by the DNRC. The Board shall post notice of the applicable amount of these fees at the Office of the Engineer and on the Board's website.

CHAPTER II WATER USE

PART 1. GENERAL PROVISIONS

2-1-101. Registration of Uses of the Tribal Water Right in Existence as of the Effective Date of the Compact.

1. Pursuant to Article III.C.1.b of the Compact, the Tribes, each Tribal Member, and each Allottee who claims to have an Existing Use of waters of the Reservation which is part of the Tribal Water Right shall file a registration of Existing Use of the Tribal Water Right with the Engineer. Uses of the Tribal Water Right for which abstracts are appended to this Compact, including uses on the FIIP, are exempt from this registration requirement.

2. Historically irrigated allotments with serviceable delivery systems that are held by individuals and in trust by the United States, and are not served by the FIIP, shall be eligible to be registered pursuant to the provisions of Sections 2-1-101 et seq. of this Ordinance even if such allotments are not being irrigated on the Effective Date of the Compact.

3. The NRD shall provide assistance to the Tribes, Tribal Members, and Allottees in preparing registrations of Existing Uses of the Tribal Water Right for filing.

4. No Tribal Member or Allottee may exercise, for the same water use, both a registration of Existing Use of the Tribal Water Right and a Water Right Recognized Under State Law.

2-1-102. Process for Registration of Existing Use of the Tribal Water Right.

1. The Tribes, Tribal Members, and Allottees claiming a use of water that falls under the terms of Section 2-1-101 of this Ordinance shall, within five years of the Effective Date of this Ordinance, file a Registration Form with the Board documenting the registration of Existing Use of the Tribal Water Right and identifying:

a. the rate and volume of water used;

b. the source of supply for the use;

c. the point of diversion by legal land description;

d. the place of use by legal land description;

e. the period of use

f. the period of diversion;

g. the place of storage (if applicable);

h. the capacity of storage (if applicable);

i. the purpose; and

j. the means of diversion.

2. Upon receipt, the Board shall transmit the Registration Form to the Office of the Engineer.

3. Upon receipt of the Registration Form, the Office of the Engineer shall review the Registration Form within 180 days and may either issue a Registration Certificate or return a defective Registration Form to the filer, together with the reasons for returning it. Upon receiving a corrected Registration Form, the Office of the Engineer has 90 days from the certified receipt of the corrected Registration Form to issue a Registration Certificate or reject the registration. If the Office of the Engineer neither issues a Registration Certificate nor rejects the registration within the initial 180 day review period, the Registration Form shall be deemed approved and the Board shall issue a Registration Certificate. If the Office of the Engineer neither issues a Registration Certificate nor rejects the registration within 30 days of certified receipt of a corrected Registration Form, the Registration Form shall be deemed approved and the Board shall issue a Registration Certificate.

4. Any Person filing a Registration Form or a corrected Registration Form with the Office of the Engineer pursuant to subsections (1) and (3) of this Section who is dissatisfied with the rejection of that corrected Registration Form by the Office of the Engineer pursuant to subsection (3) of this Section may appeal that rejection to the Board by filing a notice of appeal to the Board within 30 days of the rejection of the corrected Registration Form. To be filed, a notice must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing. Immediately upon receipt by the Board, the notice of appeal shall be date stamped.

5. Any appeal to the Board filed pursuant to subsection (4) of this Section shall be conducted pursuant to the provisions of Section 3-1-104 of this Ordinance.

2-1-103. Fee for Filing Registration of Existing Use of the Tribal Water Right. The Board shall not charge a fee for the processing of registrations or corrected registrations of Existing Uses of the Tribal Water Right.

2-1-104. Tribal Member and Allottee Entitlements Pursuant to 25 U.S.C. Section 381. All Tribal Members' and Allottees' entitlements pursuant to 25 U.S.C. Section 381 are hereby recognized and confirmed. The attributes of these entitlements shall be defined through either:

1. the process set forth in Section 2-1-101 et seq. of this Ordinance, if the Tribal Member or Allottee with an entitlement pursuant to 25 U.S.C. Section 381 also has a use of water eligible for the registration process set forth in those sections of this Ordinance; or

2. by applying for a New Appropriation as provided in Section 2-2-101 et. seq. of this Ordinance or by applying to develop a use of Flathead System Compact Water as provided in Section 2-2-118 of this Ordinance, if the Tribal Member or Allottee with an entitlement pursuant to 25 U.S.C. Section 381 does not have a use of water eligible for the registration process set forth in Section 2-1-101 et seq. of this Ordinance.

2-1-105. Tribal, Tribal Member and Allottee Challenge of a Registration Certificate Issued by the Office of the Engineer. The Tribes, Tribal Members, and Allottees may seek judicial review of any final decision by the Board pursuant to Section 2-1-102(4) of this Ordinance by filing a petition for judicial review with the Tribal Court of the Tribes within 30 days of the issuance of the final Board decision. In considering the petition, the Board's legal conclusions shall be reviewed for correctness and its factual findings for abuse of discretion.

2-1-106. Registration of Certain Other Previously Unrecorded Existing Uses. Persons who have Existing Uses on the Reservation as of the effective date of this Ordinance shall register such Existing Uses with the Board if those uses:

1. Were not required to be filed, pursuant to 85-2-222, MCA, and in fact were not filed as claims in the Montana General Stream Adjudication for a pre-1973 use of water arising under State law; or

2. Were developed on or after July 1, 1973, at a volume and flow rate that would qualify as an exception to the permit requirements of 85-2-306, MCA, and for which a notice of completion of Groundwater development (DNRC Form 602) or an application for provisional permit for completed Stock Water pit or reservoir (DNRC Form 605) was filed with the DNRC but not processed by the DNRC.

3. Were developed after July 1, 1973, at a volume and flow rate that would qualify as an exception to the permit requirements of 85-2-306, MCA, and for which a notice of completion of Groundwater development (DNRC Form 602) or an application for provisional permit for completed Stock Water pit or reservoir (DNRC Form 605) was not filed with the DNRC.

2-1-107. Process for Registration of Certain Other Previously Unrecorded Existing Uses.

1. Each Person claiming an Existing Use of water that falls under the terms of Section 2-1-106 of this Ordinance shall, within 180 days of the effective date of this Ordinance, file a Registration Form with the Board documenting that the Existing Use is for a purpose and with a flow rate and volume that falls within the terms of Section 2-1-106, and identifying:

a. the date of first use of the water;

b. the source of supply for the use;

c. the point of diversion by legal land description;

d. the place of use by legal land description; and

e. the period of use.

2. Within 30 days of the Effective Date, the DNRC shall transmit to the Board all filed but not processed completion notices (DNRC Form 602 or 605) it has received for water uses excepted from the permitting requirements of State law developed within the boundaries of the Reservation after August 22, 1996. The transmission of these notices shall constitute compliance with Section 2-1-107(1) of this Ordinance for those uses eligible for registration pursuant to Section 2-1-106(2) of this Ordinance. No additional fee shall be required for the processing of the forms transmitted by the DNRC.

3. Upon receipt, the Board shall transmit the Registration Form to the Office of the Engineer.

4. Upon receipt of the Registration Form, the Office of the Engineer shall review the Registration Form within 180 days and may either issue a Registration Certificate or return a defective Registration Form to the filer, together with the reasons for returning it. If a corrected Registration Form is submitted within 30 days of its return by the Engineer, no new filing fee shall be required. Upon receiving a corrected Registration Form, the Office of the Engineer has 90 days from the certified receipt of the corrected Registration Form to issue a Registration Certificate or reject the registration. If the Office of the Engineer neither issue a Registration Certificate nor rejects the registration within the initial 180 day review period, the Registration Form shall be deemed approved and the Board shall issue a Registration Certificate. If the Office of the Engineer neither issues a Registration Certificate nor rejects the registration within 90 days of certified receipt of a corrected Registration Form, the Registration Form shall be deemed approved and the Board shall issue a Registration Certificate.

5. For any use registered under Section 2-1-106(1) of this Ordinance, the priority date of the use shall be the date of first beneficial use, and such a date shall be reflected on the Registration Certificate.

6. For any use under Section 2-1-106(2) of this Ordinance, the priority date for the use shall be the date of filing of the appropriate form, and such a date shall be reflected on the Registration Certificate.

7. For any use under Section 2-1-106(3) of this Ordinance, the priority date for the use shall be the Effective Date of the Compact, and that date shall be reflected on the Registration Certificate.

8. Any Person filing a corrected Registration Form with the Office of the Engineer pursuant to subsection (2) of this Section who is dissatisfied with the rejection of that corrected Registration Form by the Office of the

Engineer pursuant to subsection (2) of this Section may appeal that rejection to the Board by filing a notice of appeal to the Board within 30 days of the rejection of the corrected Registration Form. To be filed, a notice must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing. Immediately upon receipt by the Board, the notice of appeal shall be date stamped.

9. Any appeal to the Board filed pursuant to subsection (6) of this Section shall be conducted pursuant to the provisions of Section 3-1-104 of this Ordinance.

2-1-108. Failure to Register an Existing Use of Water. Failure to register an Existing Use that is subject to registration as provided for under Sections 2-1-101, 2-1-102, and 2-1-106(2) and (3) of this Ordinance, shall divest the holder of the Existing Use of any legal protections otherwise afforded under the Compact and this Ordinance, to the extent not inconsistent with federal law.

2-1-109. Limitation to Beneficial Use. Beneficial use shall be the basis, measure and limit to Appropriation Rights issued pursuant to this Ordinance.

2-1-110. No Adverse Possession. No right to use water within the Reservation may be acquired by prescription or by adverse possession of use.

2-1-111. Abandonment of Appropriation Right.

1. No part of the Tribal Water Right is subject to abandonment by nonuse.

2. If an Appropriator, other than a user of any portion of the Tribal Water Right, ceases to use all or a part of an Appropriation Right, or any Existing Use, with the intention of wholly or partially abandoning the right, or if the appropriator ceases using the right according to its terms and conditions with the intention of not complying with those terms and conditions, the Appropriation Right or Existing Use is, to the extent of the nonuse, considered abandoned and must immediately expire.

3. If an Appropriator, other than a user of any portion of the Tribal Water Right, ceases to use all or part of an Appropriation Right or Existing Use, or ceases using the Appropriation Right or Existing Use according to its terms and conditions for a period of 10 successive years and there was water available for use, there is a prima facie presumption that the Appropriator has abandoned the right for the part not used.

4. If an Appropriator ceases to use all or part of an Appropriation Right or Existing Use in compliance with a candidate conservation agreement initiated pursuant to 50 CFR 17.32 or because the land to which the water is applied to a beneficial use is contracted under a state, tribal, or federal conservation, mitigation, or set-aside program:

a. the land set-aside and resulting reduction in use of the Appropriation Right or Existing Use from the conservation, mitigation, or set-aside program shall not be construed as an intent by the appropriator to wholly or partially abandon the Appropriation Right or Existing Use or to not comply with the terms and conditions attached to the right; and

b. the period of nonuse that occurs for part or all of the Appropriation Right or Existing Use as a result of the conservation, mitigation, or set-aside program shall not create and shall not be added to any previous period of nonuse to create a prima facie presumption of abandonment.

2-1-112. Procedure for Declaring Abandonment.

1. An Appropriator who claims to have been or alleges will be injured by the resumption of use of an Appropriation Right or Existing Use alleged to have been abandoned may file a petition with the Office of the Engineer to declare the Appropriation Right or Existing Use abandoned in whole or in part. Upon receipt of the petition, the Office of the Engineer shall date stamp it.

2. If the Engineer or Designee finds that the petition provides enough information to give rise to a question of abandonment, the petition shall be posted on the Board's website within 10 working days of the determination of validity. If the Engineer or Designee finds that the petition fails to provide enough information to give rise to a question of abandonment, the petition shall be rejected.

3. Upon a finding of validity pursuant to subsection (2) of this Section, a hearing shall be set within 180 days of the determination of validity, or any extended period of time, not to exceed 90 days, granted by the Engineer, for the Engineer or Designee to determine whether the Appropriation Right or Existing Use has been abandoned. Discovery prior to hearing will be as provided by the Engineer or Designee, and may commence following the notice of the hearing.

4. The owner of the right alleged to have been abandoned shall be personally served notice of the hearing by the Office of the Engineer and the hearing shall be publicly noticed by the Office of the Engineer once via a legal notice in a local newspaper of general circulation and posted by the Office of the Engineer on the Board's website for a period of 10 days commencing not less than 30 days from the date of the hearing.

5. At the hearing on the petition, the burden of proof shall be on the petitioner who must prove by a preponderance of the evidence that the Appropriation Right or Existing Use has been abandoned pursuant to Section 2-1-111 of this Ordinance, unless a prima facie presumption of abandonment has arisen pursuant to Section 2-1-111(3). In such circumstances, the burden of proof is shifted to the owner of the right alleged to have been abandoned, who must prove by a preponderance of the evidence a lack of intent to abandon the right in

question.

6. The hearing shall be recorded electronically and an official record maintained. All evidence that, in the opinion of the Engineer or Designee, possesses probative value shall be admitted, including hearsay, if it is the type of evidence commonly relied upon by reasonably prudent Persons in the conduct of their normal business affairs. Rules of privilege recognized by law shall be given effect. Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded.

7. A written decision by the Engineer or Designee shall be rendered within 60 days of the hearing, disseminated to the parties, and posted by the Office of the Engineer on the Board's website within 10 days of its issuance. If the individual who conducted the hearing becomes unavailable to the Office of the Engineer, a decision may be prepared by an individual who has read the record only if the demeanor of witnesses is considered immaterial by all parties; if any party considers the demeanor of any witness to be material to the resolution of the appeal, a new hearing must be held.

8. Any party to the abandonment hearing dissatisfied with the decision of the Engineer or Designee may appeal to the Board (and become an appellant) and obtain review of the Engineer's or Designee's decision. A notice of appeal to the Board must be filed with the Board within 30 days of the Engineer's or Designee's decision. To be filed, a notice must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing. Immediately upon receipt by the Board, the notice of appeal shall be date stamped.

9. Appeal to the Board pursuant to subsection (8) of this Section, shall be made and resolved pursuant to the provisions of Section 2-2-111 of this Ordinance.

10. Any petitioner whose petition is rejected by the Engineer or Designee as failing to provide enough information to give rise to a question of abandonment may appeal the Engineer's decision to the Board pursuant to the provisions of Section 3-1-104 of this Ordinance.

2-1-113. Prevention of Waste and Interference with Lawful Use.

1. Waters within the Reservation may not be wasted, nor may water be used unlawfully, nor may a lawful use of water be interfered with.

2. All facilities, Works and equipment associated with the withdrawal, impoundment, pumping, diversion, drainage, or transmission of waters on the Reservation shall be so constructed, installed, and maintained as to prevent the Waste, contamination, or pollution of surface and Groundwater and to avoid injury to the lands and

property of others. All wells, producing and non-producing, which may contaminate other surface or Groundwater must be properly abandoned or upgraded with a sanitary seal, in accordance with the water well criteria incorporated by reference in Section 1-1-111 of this Ordinance. All flowing wells shall be capped or equipped with valves so that the flow of water can be stopped when the water is not being put to beneficial use.

3. The Board, on its own initiative or through the Office of the Engineer, may require the recipient of any Appropriation Right issued pursuant to this Ordinance to construct or install a weir, head gate, valve, meter, gauge, or other reasonable and appropriate device for the control and measurement of water and for the prevention of Waste.

2-1-114. Issuance of Appropriation Right Does Not Constitute Permission to Trespass. The issuance of an Appropriation Right pursuant to this Ordinance does not constitute a license or permission to trespass on land which the holder of the Appropriation Right does not otherwise have a legal right to access, not does it constitute a ditch right.

2-1-115. Development of Enforceable Schedule for the Tribes' Other Instream Flow Rights.

1. As set forth in the Compact, each of the Tribes' instream flow rights identified in Article III.C.1.d.iii of the Compact shall not be enforceable until after an enforceable schedule for that stream reach is promulgated pursuant to the process set forth in this Section. This process shall not commence for any stream reach until the Compact has been finally approved by the Montana Water Court, and until the Montana Water Court has issued a final decree for the water court basin (76L or 76LJ) in which that stream reach lies, including the expiration of all time for appeals, or the resolution of any such appeal, whichever date is latest (the "Eligibility Date").

2. At any time after the Eligibility Date, the Tribes may initiate the enforceable schedule process for any given stream reach included in the rights identified in Article III.C.1.d.iii of the Compact by:

a. providing notice to water rights holders in the reach of the Tribes' initiation of the process to finalize and implement the enforceable schedule;

b. developing a full summary of all Water Rights Arising Under State Law in the reach, including a monthly time-step pattern of water use;

c. developing a summary of streamflow conditions, at or near each enforceable schedule compliance point within the reach area, utilizing:

i. streamflow gaging information; or

ii. an accepted hydrologic analysis procedure to estimate streamflow conditions. The method to develop streamflow information will be based on the professional judgment of the Tribes' hydrologist responsible for

coordinating the enforceable schedule process; and

d. preparing a report on the availability of water to fulfill the Tribes' instream flow water right for that reach area.

3. The Tribes shall prepare each proposed enforceable schedule based on a water budget that allows valid water rights to be exercised.

4. The Tribes shall hold one or more public meetings, and provide timely advanced notice to affected water users of each such meeting, to report on the completion of the water availability study and the proposed enforceable schedule for that reach area.

5. The Tribes shall consider the public comment received either at the public meeting(s) or within 30 days thereafter, and shall finalize the proposed enforceable schedule for a given reach area no fewer than 45 days after the day of the last public meeting.

6. The Tribes shall provide written notice to the Engineer of the finalized proposed enforceable schedule, including an explanation of the technical basis therefore. Upon receipt, the Engineer shall forward the proposed enforceable schedule to Staff for review.

7. Staff, using information from the written notice, as well as their own compilation of independent resources and analysis, if available, shall issue a recommended decision as to whether to adopt the enforceable schedule within 90 days of the date of the written notice provided by the Tribes pursuant to subsection (6) of this Section.

8. If the recommended decision is to adopt the enforceable schedule, a summary of the proposed enforceable schedule and the recommended decision shall be publicly noticed by the Office of the Engineer once via a legal notice in a local newspaper of general circulation and posted by the Office of the Engineer on the Board's website for a period not less than 45 days from the date the recommendation is issued. A summary of the proposed enforceable schedule and the recommended decision shall also be distributed electronically to individuals or entities who have registered with the Board to receive electronic notice. If no objections are filed within 45 days of the initial Publication of the recommended decision by the Office of the Engineer, or if all filed objections are unconditionally withdrawn prior to being ruled upon, the application shall be granted by the Engineer or Designee within 10 days after expiration of the time for filing objections or after the unconditional withdrawal of the last objection, whichever date is later.

9. Objections to a proposed enforceable schedule may be filed only by holders of water rights in the particular stream reach for which the enforceable schedule is proposed. The only cognizable ground for objection

is that the proposed enforceable schedule will have an adverse effect on the objector's water right. An objection must describe the alleged adverse effect on the objector's water right. The burden of proof shall be on the objector.

10. An objector or the Tribes may elect to have any valid objection decided on the record or after hearing. If the objector elects to have a hearing, that request must be made at the same time as the filing of the objection or the objector's right to a hearing is waived. The Tribes must invoke the right to a hearing within 10 days of receiving notice of the objection or the Tribes' right to a hearing is waived.

11. Discovery prior to hearing will be as provided by the Engineer or Designee, and may commence following the receipt of a valid objection.

12. The Engineer or Designee, after issuance of notice of hearing, may not communicate with any party to that case or any party's representative(s) in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate.

13. The hearing shall be recorded electronically and an official record maintained.

14. All evidence that, in the opinion of the Engineer or Designee, possesses probative value shall be admitted, including hearsay, if it is the type of evidence commonly relied upon by reasonably prudent Persons in the conduct of their normal business affairs. Rules of privilege recognized by law shall be given effect. Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded.

15. A written decision by the Engineer or Designee shall be rendered within 60 days of the hearing, disseminated to the parties, and posted by the Office of the Engineer on the Board's website within 10 days of its issuance. If the individual who conducted the hearing becomes unavailable to the Office of the Engineer, a decision may be prepared by an individual who has read the record only if the demeanor of witnesses is considered immaterial by all parties to the case. If any party considers the demeanor of any witness to be material to the resolution of the appeal, a new hearing must be held.

16. The Tribes or any objector dissatisfied with the final decision of the Engineer or Designee may appeal to the Board (and become an appellant) and obtain review of the Engineer's or Designee's decision. A notice of appeal to the Board must be filed with the Board within 30 days of the Engineer's or Designee's decision. To be filed, a notice must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing. Immediately upon receipt by the Board, the notice of appeal shall be date stamped. Appeal to the Board shall be resolved pursuant to the provisions of Section 2-2-111 of this Ordinance.

17. If the recommended decision is to reject the proposed enforceable schedule, the Tribes may withdraw the proposed enforceable schedule within 10 days of the issuance of the recommended decision, or may appeal the recommended decision to the Engineer by filing a notice of appeal within 30 days of issuance of the recommended decision. The Tribes may elect to have the appeal decided on the record, after submission of additional evidence and argument, or after hearing. If the Tribes elect to have a hearing, that request must be made at the same time as the filing of the notice of appeal or the right to a hearing is waived. The notice of appeal must specify those parts of the recommended decision claimed to be in error.

18. Within 60 days from the filing of the notice of appeal, or any extended period of time, not to exceed 60 days, granted by the Engineer or Designee, the Tribes may submit additional factual evidence and legal argument in support of the proposed enforceable schedule. Staff who issued the recommended decision shall have 45 days from the Tribes' submission to revise, amend, or affirm the recommended decision in a second recommended decision that explains in writing the rationale for the second recommended decision.

19. If the recommended decision or second recommended decision is to reject the proposed enforceable schedule and no notice of appeal is filed pursuant to this Section, the proposed enforceable schedule shall be deemed rejected the day after expiration of the time for filing a notice of appeal. The rejection of a proposed enforceable schedule does not preclude the Tribes from filing another proposed enforceable schedule for the same or any other stream reach identified in the rights set forth in Article III.C.1.d.iii of the Compact.

20. The Tribes bear the burden of demonstrating to the Engineer or Designee by a preponderance of the evidence, whether a hearing is held or not, that the recommended decision or second recommended decision is in error.

21. If the Tribes request a hearing before the Engineer or Designee, a hearing shall be held no later than the latest of the following:

a. 90 days after the filing of the notice of appeal; or

b. 30 days after the issuance of a second recommended decision pursuant to subsection (2) of this Section, whichever is later.

22. The hearing shall be recorded electronically and an official record maintained. All evidence that, in the opinion of the Engineer or Designee, possesses probative value shall be admitted, including hearsay, if it is the type of evidence commonly relied upon by reasonably prudent Persons in the conduct of their normal business affairs. Rules of privilege recognized by law shall be given effect. Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded.

23. A decision by the Engineer or Designee to reverse, modify, or affirm the recommended decision or the second recommended decision shall be made in writing within 60 days after the later of:

a. the filing of a notice of appeal pursuant to subsection (1) of this Section;

b. the submission of additional evidence or legal argument pursuant to subsection (2) of this Section;

c. issuance of Staff's second recommended decision; or

d. the completion of the hearing.

24. If the Engineer or Designee reverses the recommended decision or the second recommended decision, and determines that the enforceable schedule should not have been rejected, the proposed enforceable schedule shall be publicly noticed to the public and processed pursuant to the provisions of subsections (8)-(16) of this Section.

25. If the Engineer or Designee affirms the recommended decision or the second recommended decision, resulting in the rejection of the proposed enforceable schedule, the Tribes may either accept that decision by withdrawing the proposed enforceable schedule or taking no further action, or may appeal that decision to the Board pursuant to Section 2-2-111 of this Ordinance. If no timely notice of appeal is filed, the proposed enforceable schedule shall be deemed rejected on the day after the expiration of the time to file the notice of appeal.

26. Any final Board decision on implementation of the enforceable schedule made pursuant to the process outlined in this Section may be appealed pursuant to Section 2-2-112 of this Ordinance.

PART 2. PERMIT AND CHANGE APPLICATION PROCESS

2-2-101. Appropriation Rights and Change in Use authorizations on the Reservation. After the Effective Date, a Person within the exterior boundaries of the Reservation may not Appropriate surface water or Groundwater for a new beneficial use, or change an Existing Use, or commence construction of diversion, impoundment, withdrawal, or related distribution Works except by applying for and receiving an Appropriation Right, or Change in Use authorization, from the Board.

2-2-102. Burden of Proof for Ground or Surface Water Permits and Change Authorizations.

1. For any application for an Appropriation Right or Change in Use that is not one of the categories of Appropriation Right identified in Sections 1-1-112(1) or 2-2-118 of this Ordinance, applicants for an Appropriation Right, or for a Change in Use authorization must prove by a preponderance of the evidence that the proposed new Appropriation Right or Change in Use authorization will not adversely affect any Appropriator.

2. For any application for an Appropriation Right or Change in Use that is not one of the categories of

Appropriation Right identified in Sections 1-1-112(1) or 2-2-118 of this Ordinance, the Board, Engineer, or Designee may modify or condition the issuance of Appropriation Right or Change in Use authorization applied for, to assure that:

a. the new Appropriation Right or Change in Use authorization will not adversely affect any Appropriator;

b. the proposed means of diversion, construction, and operation of the appropriation Works are adequate;

c. except in the case of instream flows or other non-consumptive uses, the applicant has the possessory interest or the written consent of the Person(s) with possessory interest in the property where the water is to be put to beneficial use;

d. the water quality of an Appropriator will not be adversely affected;

e. the proposed use will be consistent with the classification of water set for the source of supply pursuant to water quality standards established under the federal Clean Water Act, 33 USC Section 1251 et seq., and contained in regulations promulgated under the Confederated Salish and Kootenai Tribes' Water Quality Management Ordinance, Tribal Ordinance 89B; and

f. the proposed Appropriation Right or Change in Use authorization will not impair the ability of a discharge permit holder to satisfy effluent limitations set forth in a permit issued in accordance with water quality standards established under the federal Clean Water Act, 33 USC Section 1251 et seq., and contained in regulations promulgated under the Confederated Salish and Kootenai Tribes' Water Quality Management Ordinance, Tribal Ordinance 89B.

2-2-103. Pre-Application Meeting with Office of the Engineer. Prior to applying to the Board for a new Appropriation Right or Change in Use authorization, within the exterior boundaries of the Flathead Reservation, applicants may meet informally with Staff regarding the application process and information requirements.

2-2-104. Application to Board.

1. An applicant for a new Appropriation Right or Change in Use authorization must:

a. pay the appropriate application fee in the amount set by the Board;

b. fill out completely:

i. the Flathead Reservation Appropriation Right Application; or

ii. the Flathead Reservation Application for a Change in Use authorization; and

iii. all applicable addenda;

c. attach to each application all required maps; and

d. sign, date, and notarize or otherwise swear under appropriate oath to the accuracy of the contents of

each application.

2. Upon the day of the receipt of an application, or amendment to an application, for a new Appropriation Right or Change in Use authorization, the Office of the Engineer must stamp it received.

3. If an application for a new Appropriation Right is ultimately granted, the priority date of the application is the date the application is stamped received by the Office of the Engineer.

4. All application forms may, upon recommendation by the Engineer, be modified by a unanimous vote of the Board. Any such modification is pursuant to and does not constitute a modification of this Ordinance or the Compact.

2-2-105. Adequate to Process Review.

1. Within 30 days of receipt by the Office of the Engineer of an application for a new Appropriation Right or Change in Use authorization, Staff shall review the application and make a determination whether the application is adequate to process. An application is adequate to process if it:

a. clearly identifies the proposed project; and

b. contains the information required by the following forms:

i. Flathead Reservation Appropriation Right Application, including for Groundwater applications Addendum B - "Flathead Reservation Groundwater Minimum Aquifer Testing Requirements"; or

ii. Flathead Reservation Application for a Change in Use authorization.

2. Staff may waive aquifer testing requirements if sufficient hydrogeologic information already exists on the source and in the location of the proposed development.

3. An application determined to be adequate to process shall be posted on the Board's website within 10 working days of the determination of adequacy.

2-2-106. Not Adequate to Process Determination.

1. If Staff determines an application for a new Appropriation Right or Change in Use authorization is not adequate to process, the Office of the Engineer shall send a letter to the applicant notifying the applicant of the defects in the application.

2. An applicant has 90 days from the date of mailing of the notice of inadequacy pursuant to subsection (1) of this Section to make the application adequate to process. An application for a new Appropriation Right whose defects are timely corrected and which is ultimately granted retains its priority of the date of the initial application.

3. Upon receipt of the information from the applicant to correct deficiencies, Staff must review the updated

application and make a determination within 30 days whether the application is adequate to process.

4. An application that is not timely made adequate to process, either through the applicant's failure to respond to the notice of inadequacy issued pursuant to subsection (1) of this Section within the timeframe set forth in subsection (2) of this Section, or by the applicant's failure to provide sufficient information in response to a notice of inadequacy issued pursuant to subsection (1) of this Section within the timeframe set forth in subsection (2) of this Section, shall be deemed denied.

5. An applicant who disagrees with the decision to deny may appeal that decision to the Board pursuant to Section 3-1-104 of this Ordinance. If such an appeal is filed, the Engineer shall be the appellee.

2-2-107. Application Analysis and Recommended Decision.

1. Prior to the expiration of the time periods set forth in Sections 2-2-105(1), 2-2-106(2), 2-2-106(3), or 2-2-108(2) of this Ordinance, Staff may meet informally with an applicant to discuss an application, including any proposed Mitigation Plan. The results of such meetings shall be documented by a summary memo prepared by Staff and included in the application file. An applicant may also submit a memo documenting the meeting, which becomes part of the application file. If an application submitted pursuant to Section 2-2-104 or a Mitigation Plan submitted pursuant to Section 2-2-108(2) of this Ordinance is amended during this informal process, the amended application shall be reviewed by an individual on Staff who was not involved in the informal process to determine whether the amendments are so substantial that they constitute a new application. If it is determined that the amended application constitutes a new application, that application must be reviewed in its entirety pursuant to Sections 2-2-105 and 2-2-106 of this Ordinance. A new application fee must be submitted. A determination that an application amendment is so substantial as to constitute a new application may be appealed to the Engineer pursuant to Section 2-2-109 of this Ordinance.

2. Staff shall analyze an application determined to be adequate to process pursuant to Section 2-2-105 of this Ordinance within 180 days of the determination of adequacy using tools or techniques that may include:

a. independent resources compiled by Staff (including, but not limited to, Water Resources Surveys and field notes, aerial photographs, water rights decrees, stream gauging records, well logs, and water rights records);

b. water use records (water measurement, ranch logs, etc.) submitted by the applicant;

c. field inspection by Staff;

d. hydrologic or geohydrologic evaluation completed by Staff, provided that all model results, if any, shall be documented.

3. All information relied on by Staff in analyzing an application pursuant to this Section shall be

documented in the application file.

4. Staff, using information from the application as well as their own compilation of independent resources and analysis, shall draft a recommended decision with findings of fact and conclusions of law determining:

a. whether the proposed Appropriation Right or Change in Use authorization will cause adverse effect to any Appropriator; and

b. whether and, if so, what amount of Mitigation is required before the proposed Appropriation Right or Change in Use authorization may be issued.

5. If the recommended decision is to grant the application, a summary of the application and the recommended decision shall be publicly noticed by the Office of the Engineer once via a legal notice in a local newspaper of general circulation and posted by the Office of the Engineer on the Board's website for a period not less than 45 days from the date the recommendation is issued. A summary of the application and the recommended decision shall also be distributed electronically to individuals or entities who have registered with the Board to receive electronic notice. If no objections are filed within 45 days of the initial Publication of the recommended decision by the Office of the Engineer, or if all filed objections are unconditionally withdrawn prior to being ruled upon, the application shall be granted by the Engineer or Designee within 10 days after expiration of the time for filing objections or after the unconditional withdrawal of the last objection, whichever date is later.

6. If the recommended decision is to deny the application, the applicant may withdraw the application within 10 days of the issuance of the recommended decision or appeal the recommended decision to the Engineer pursuant to Section 2-2-109 of this Ordinance. The application filing fee shall not be refunded upon withdrawal. Failure to withdraw the application or file an appeal within the applicable timeframes shall result in the application being deemed denied on the day after the expiration of the time to appeal.

7. If the recommended decision is to grant the application with conditions other than Mitigation, the application shall be noticed to the public and processed pursuant to the procedures set forth in Sections 2-2-107(5) and 2-2-110 of this Ordinance unless the applicant withdraws the application within 30 days of the issuance of the recommended decision or appeals the recommended decision to the Engineer pursuant to Section 2-2-109 of this Ordinance. The application filing fee shall not be refunded upon withdrawal.

8. Amendments to applications are not allowed after the issuance of a recommended decision on that application, except as provided in Section 2-2-108(2) of this Ordinance.

2-2-108. Process if Mitigation Required.

1. If Staff analysis of an application concludes that Mitigation is necessary to approve an application, a

recommended decision shall be issued to that effect. Upon issuance of a recommended decision finding that Mitigation is required, the applicant may:

a. withdraw the application (with no refund of the application filing fee);

b. appeal the recommended decision to the Engineer pursuant to Section 2-2-109 of this Ordinance; or

c. prepare a Mitigation Plan.

2. If the applicant chooses to prepare a Mitigation Plan, the running of the time set forth in Section 2-2-107(2) of this Ordinance for processing that application is suspended until a timely Mitigation Plan is received from the applicant. The Mitigation Plan must be submitted within 180 days of issuance of the recommended decision requiring Mitigation, or of the decision of the Engineer or Designee as set forth in Section 2-2-109(10) of this Ordinance, whichever date is later, and must include either or both of:

a. an application for a Change in Use authorization for another water right so as to provide for the required Mitigation; and/or

b. amendments describing the source, volume, flow rate, point of diversion, place of use, period of use, and place of storage of mitigation water that comes from other than a change authorization.

3. The running of the time set forth in Section 2-2-107(2) of this Ordinance for analyzing the application and issuing a recommended decision resumes upon the timely receipt by the Office of the Engineer of the material(s) required by subsection (2) of this Section.

4. If a Mitigation Plan is timely submitted by an applicant following a decision of the Engineer or Designee as set forth in Section 2-2-109(10) of this Ordinance, Staff shall issue a new recommended decision concerning the application within 180 days of the timely submission of the Mitigation Plan.

5. If the recommended decision is to grant the application conditioned on the Mitigation Plan submitted by the applicant pursuant to subsection (2) of this Section, the application shall be noticed to the public and processed pursuant to the procedures set forth in Sections 2-2-107(5) and 2-2-110 of this Ordinance.

6. If the recommended decision is to deny the application, the applicant may withdraw the application within 10 days of the issuance of the recommended decision or appeal the recommended decision to the Engineer pursuant to Section 2-2-109 of this Ordinance. The application filing fee shall not be refunded upon withdrawal. Failure to withdraw the application or file an appeal within the applicable timeframes shall result in the application being deemed denied on the day after the expiration of the time to appeal.

7. If the Mitigation Plan is not submitted within 180 days of issuance of the recommended decision requiring Mitigation the application shall be deemed denied.

2-2-109. Appeal to Engineer from Recommended Decision.

1. If a recommended decision issued pursuant to Sections 2-2-107 or 2-2-108 of this Ordinance is to deny an application, or grant it with a requirement of Mitigation or other conditions, the applicant may appeal to the Engineer by filing a notice of appeal within 30 days of issuance of the recommended decision. An applicant may elect to have the appeal decided on the record, after submission of additional evidence and argument, or after hearing. If the applicant elects to have a hearing, that request must be made at the same time as the filing of the notice of appeal or the right to a hearing is waived. The notice of appeal must specify those parts of the recommended decision claimed to be in error.

2. Within 60 days from the filing of the notice of appeal, or any extended period of time, not to exceed 60 days, granted by the Engineer or Designee, the applicant may submit additional factual evidence and legal argument in support of the application. Staff who issued the recommended decision shall have 45 days from the applicant's submission to revise, amend, or affirm the recommended decision in a second recommended decision that explains in writing the rationale for the second recommended decision.

3. If the recommended decision or second recommended decision is to deny an application and no notice of appeal is filed pursuant to this Section, the application shall be deemed denied the day after expiration of the time for filing a notice of appeal.

4. The applicant bears the burden of demonstrating to the Engineer or Designee by a preponderance of the evidence, whether a hearing is held or not, that the recommended decision or second recommended decision is in error.

5. If the applicant requests a hearing before the Engineer or Designee, a hearing shall be held no later than the latest of the following:

a. 90 days after the filing of the notice of appeal; or

b. 30 days after the issuance of a second recommended decision pursuant to subsection (2) of this Section, whichever is later.

6. The hearing shall be recorded electronically and an official record maintained. All evidence that, in the opinion of the Engineer or Designee, possesses probative value shall be admitted, including hearsay, if it is the type of evidence commonly relied upon by reasonably prudent Persons in the conduct of their normal business affairs. Rules of privilege recognized by law shall be given effect. Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded.

7. A decision by the Engineer or Designee to reverse, modify, or affirm the recommended decision or the

second recommended decision shall be made in writing within 60 days after the later of:

a. the filing of a notice of appeal pursuant to subsection (1) of this Section;

b. the submission of additional evidence or legal argument pursuant to subsection (2) of this Section;

c. issuance of Staff's second recommended decision; or

d. the completion of the hearing.

8. If the Engineer or Designee reverses the recommended decision or the second recommended decision, and determines that the application should be granted, the application shall be publicly noticed to the public and processed pursuant to the provisions of Section 2-2-107(5) and Section 2-2-110 of this Ordinance.

9. If the Engineer or Designee affirms the recommended decision or the second recommended decision, resulting in the denial of an application, the applicant may either accept that decision by withdrawing the application or taking no further action, or may appeal that decision to the Board pursuant to Section 2-2-111 of this Ordinance. The application filing fee shall not be refunded upon withdrawal. If no timely notice of appeal is filed, the application shall be deemed denied on the day after the expiration of the time to file the notice of appeal.

10. If the Engineer or Designee affirms the recommended decision or the second recommended decision, resulting in the granting of an application with a requirement of conditions other than Mitigation, the applicant may withdraw the application; file with the Office of the Engineer written acceptance of the conditions within 30 days of the Engineer's or Designee's decision, in which case the application will be noticed to the public and processed pursuant to the provisions of Sections 2-2-107(5) and 2-2-110 of this Ordinance; or appeal the decision to the Board pursuant to Section 2-2-111 of this Ordinance. The application filing fee shall not be refunded upon withdrawal. Failure to withdraw the application, file written acceptance of the condition, or file an appeal within the applicable timeframes shall result in the application being deemed denied on the day after the expiration of the time to appeal.

11. If an applicant has appealed to the Engineer a Staff determination that Mitigation is necessary pursuant to Section 2-2-108(1)(b) of this Ordinance, and the Engineer or Designee affirms the recommended decision resulting in a determination that Mitigation is required before the application may be granted, the applicant may withdraw the application; appeal the decision to the Board pursuant to Section 2-2-111 of this Ordinance; or prepare a Mitigation Plan pursuant to Section 2-2-108(2) of this Ordinance. The application filing fee shall not be refunded upon withdrawal. Failure to withdraw the application, file a Mitigation Plan, or file an appeal within the applicable timeframes shall result in the application being deemed denied on the day after the expiration of the time to file a Mitigation Plan.

12. If the Engineer or Designee affirms a recommended decision or second recommended decision that found a Mitigation Plan inadequate to justify the issuance of the proposed Appropriation Right or Change in Use authorization, the applicant may either accept that decision by withdrawing the application or taking no further action, or may appeal that decision to the Board pursuant to Section 2-2-111 of this Ordinance. The application filing fee shall not be refunded upon withdrawal. If no timely notice of appeal is filed, the application shall be deemed denied on the day after the expiration of the time to file the notice of appeal.

13. Any applicant wishing to appeal a decision of the Engineer or Designee pursuant to this Section must file a notice of appeal with the Board. Any such notice of appeal must be filed with the Board within 30 days of the Engineer's or Designee's decision. To be filed, a notice must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing. Immediately upon receipt by the Board, the notice of appeal shall be date stamped.

2-2-110. Notice and Hearing on Recommended Decision to Grant.

1. Any Person alleging that they will suffer adverse effect from the grant of an application for proposed Appropriation Right or Change in Use authorization may file an objection to a recommended decision to grant an application. To be valid, an objection must describe the alleged adverse effect on the objector's water right.

2. An objector or an applicant may elect to have any valid objection decided on the record or after hearing. If the objector elects to have a hearing, that request must be made at the same time as the filing of the objection or the objector's right to a hearing is waived. The applicant must invoke the right to a hearing within 10 days of receiving notice of the objection or the applicant's right to a hearing is waived.

3. Discovery prior to hearing will be as provided by the Engineer or Designee, and may commence following the receipt of a valid objection.

4. If, prior to the hearing, valid objections are withdrawn pursuant to an agreement between or among the applicant and objector(s) setting forth various conditions on the application, the Engineer or Designee shall grant the application subject to those conditions necessary to satisfy the criteria set forth in Section 2-2-102(1) of this Ordinance, but the Engineer or Designee has the discretion to accept or reject other conditions of the agreement between or among the applicant and objector(s).

5. The Engineer or Designee, after issuance of notice of hearing, may not communicate with any party to that case or any party's representative(s) in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate.

6. The hearing shall be recorded electronically and an official record maintained.

7. All evidence that, in the opinion of the Engineer or Designee, possesses probative value shall be admitted, including hearsay, if it is the type of evidence commonly relied upon by reasonably prudent Persons in the conduct of their normal business affairs. Rules of privilege recognized by law shall be given effect. Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded.

8. The burden of proof is on the applicant to prove the applicable criteria of Section 2-2-102(1) of this Ordinance by a preponderance of evidence.

9. A written decision by the Engineer or Designee shall be rendered within 60 days of the hearing, disseminated to the parties, and posted by the Office of the Engineer on the Board's website within 10 days of its issuance. If the individual who conducted the hearing becomes unavailable to the Office of the Engineer, a decision may be prepared by an individual who has read the record only if the demeanor of witnesses is considered immaterial by all parties to the case. If any party considers the demeanor of any witness to be material to the resolution of the appeal, a new hearing must be held.

10. Any applicant or objector dissatisfied with the final decision of the Engineer or Designee may appeal to the Board (and become an appellant) and obtain review of the Engineer's or Designee's decision. A notice of appeal to the Board must be filed with the Board within 30 days of the Engineer's or Designee's decision. To be filed, a notice must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing. Immediately upon receipt by the Board, the notice of appeal shall be date stamped.

2-2-111. Appeal to the Board.

1. Any question not raised before the Engineer or Designee may not be raised in the appeal to the Board unless it is shown to the satisfaction of the Board that there was good cause for failure to raise the question before the Engineer or Designee.

2. Appeal to the Board of decisions of the Engineer or Designee shall be confined to the record. If, before the date set for hearing the appeal, application is made to the Board for leave to present additional evidence and it is shown to the satisfaction of the Board that the additional evidence is material and that there were good reasons for failing to present it in the proceeding before the Engineer or Designee, the Board may order that the additional evidence be taken before the Engineer or Designee upon conditions determined by the Board, including the deadline for submission of additional evidence to the Engineer or Designee and for the conclusion

of the Engineer's or Designee's review of any such additional evidence. The Engineer or Designee may modify the findings and decision by reason of the additional evidence or may affirm the prior decision and shall file a modified decision or notice of affirming the decision with the Board pursuant to a reasonable deadline set by the Board.

3. If the appellant requests an oral argument, the Board must hold oral argument on the appeal. If the appellant does not request an oral argument, the Board may, in its discretion, order oral argument or may resolve the appeal without one.

4. Review by the Board:

a. the review by the Board must be confined to the record. In cases of alleged irregularities in procedure before the Engineer or Designee not shown in the record, proof of the irregularities may be taken by the Board. The Board, upon request, shall hear oral argument and receive written briefs.

b. the Board may not substitute its judgment for that of the Engineer or Designee as to the weight of the evidence on questions of fact.

c. the Board may affirm the decision of the Engineer or Designee or remand the case for further proceedings.

d. the Board may reverse or modify the decision if substantial rights of an appellant have been prejudiced because:

i. the Engineer's or Designee's findings, inferences, conclusions, or decisions are:

(1) in violation of constitutional or statutory provisions;

(2) in excess of the authority of the Engineer or Designee;

(3) made upon unlawful procedure;

(4) affected by other error of law;

(5) clearly erroneous in view of the record as a whole;

(6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

ii. findings of fact, upon issues essential to the decision, were not made although requested.

2-2-112. Appeal to Court of Competent Jurisdiction. Pursuant to Article IV.I.6 of the Compact, an aggrieved party may obtain review of a final decision of the Board by filing a petition for judicial review with a Court of Competent Jurisdiction within 30 days of the issuance of the final Board decision. In considering the petition, the Board's legal conclusions shall be reviewed for correctness and its factual findings for abuse of

discretion. In the event that a court determines that it lacks subject matter or personal jurisdiction to rule on a petition for judicial review of a Board decision, the party filing the petition shall be entitled to petition for judicial review from any other Court of Competent Jurisdiction within thirty days from the date of a final court order finding lack of jurisdiction.

2-2-113. Completion.

1. Whenever an Appropriation Right or Change in Use authorization is issued under this Chapter, the Engineer or Designee shall specify in writing as part of the Appropriation Right or Change in Use authorization issued, or in any authorized extension of time provided pursuant to subsection (2) of this Section, the time limits for commencement of the appropriation Works, completion of construction, and actual application of water to the proposed beneficial use. In fixing those time limits, the Engineer or Designee shall consider the cost and magnitude of the project, the engineering and physical features to be encountered, and, on projects designed for gradual development and gradually increased use of water, the time reasonably necessary for that gradual development and increased use. The Engineer or Designee shall issue the Appropriation Right or Change in Use authorization, or the authorized extension of time, subject to the terms, conditions, restrictions and limitations the Engineer or Designee considers necessary to ensure that work on the Appropriation is commenced, conducted, and completed and that the water is actually applied in a timely manner to the beneficial use specified in the Appropriation Right or Change in Use authorization.

2. The Engineer or Designee, for good cause shown, may extend the time limits specified in the Appropriation Right or Change in Use authorization for commencement of the appropriation Works, completion of construction, and actual application of water to the proposed beneficial use. If commencement of the appropriation Works, completion of construction, or actual application of water to the proposed beneficial use is not completed within the time limit set forth in the Appropriation Right or Change in Use authorization, or by any extension granted pursuant to this subsection, the Appropriation Right or Change in Use authorization is void upon lapse of the time limit.

3. Any owner of an Appropriation Right or Change in Use authorization who disagrees with the time limit specified by the Engineer or Designee pursuant to subsections (1) and (2) of this Section may appeal the Engineer's decision to the Board pursuant to Section 2-2-111 of this Ordinance. A notice of appeal must be filed with the Board within 30 days of the Engineer's or Designee's decision. To be filed, a notice must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing.

2-2-114. Compliance with Completion Deadline. Upon actual application of water to the proposed beneficial use within the time allowed by the Engineer or Designee pursuant to Section 2-2-113 of this Ordinance, the owner of the Appropriation Right or Change in Use authorization shall notify the Office of the Engineer that the Appropriation has been completed. The notification must contain a certified statement by an individual with experience in the design, construction, or operation of appropriation Works describing how the Appropriation was completed. The Office of the Engineer shall review the certified statement and may then inspect the Appropriation, and if it determines that the Appropriation has been completed in substantial accordance with the Appropriation Right or Change in Use authorization, it shall issue the owner of the Appropriation Right or Change in Use authorization a Flathead Reservation Appropriation Right Document. The original of the document shall be sent to the owner of the Appropriation Right or Change in Use authorization, and a duplicate shall be kept in the Office of the Engineer.

2-2-115 Redundant and Substitute Wells.

1. An Appropriator may change an Appropriation Right or Existing Use without first applying for a Change in Use authorization pursuant to Sections 2-2-101 et seq. of this Ordinance for the purpose of constructing a Substitute Well if:

a. the rate and volume of the appropriation from the Substitute Well are equal to or less than that of the Well being replaced;

b. the water from the Substitute Well is appropriated from the same Groundwater source as the water appropriated from the Well being replaced; and

c. a timely, correct and complete Notice of Substitute Well is submitted to the Engineer as provided in subsection 2 of this Section.

2. Review.

a. Within 60 days after a Substitute Well is completed and delivering water, the Appropriator shall file a Notice of Substitute Well with the Office of the Engineer on a form provided by the Board. Upon receipt of the Notice, the Office of the Engineer shall date stamp it.

b. The Engineer or Designee shall review the Notice of Substitute Well within 90 days of the date stamped on it pursuant to subsection (2)(a) of this Section, and shall issue a Change in Use authorization if all of the criteria identified in subsection (1) of this Section have been met and the Notice of Substitute Well is correct and complete.

c. The Engineer or Designee may not issue a Change in Use authorization until a correct and complete

Notice of Substitute Well has been filed with the Office of the Engineer. The Office of the Engineer shall return to the Appropriator a Notice that is determined by Staff to be defective, along with a description of defects in the Notice. The Appropriator shall refile a corrected and completed Notice of Substitute Well within 30 days of notification of defects or within a further time as the Engineer or Designee may allow, not to exceed 180 days. If the Appropriator does not refile within that timeframe, the Appropriation Right will be deemed denied and the Appropriator must then comply with the provisions of subsection (d) of this Section.

d. If a Notice of Substitute Well is not completed within the time allowed, the Appropriator shall:

i. cease appropriation of water from the Substitute Well pending approval by the Engineer or Designee; and

ii. submit an application for a Change in Use authorization pursuant to Section 2-2-104 of this Ordinance; or

iii. comply with the well abandonment procedures, standards and rules adopted by the board of water well contractors pursuant to 37-43-202, MCA, or any successor procedures, standards and rules that are promulgated in State law.

3. Wells that have been determined to be abandoned pursuant to Sections 2-1-111 and 2-1-112 of this Ordinance are not eligible to be replaced by Substitute Wells under this Section.

4. For each well that is replaced under subsection (1) of this Section, the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202, MCA, or any successor procedures, standards and rules that are promulgated in State law.

5. An Appropriator may change an Appropriation Right or Existing Use without first applying for a Change in Use authorization pursuant to Section 2-2-101, et seq. of this Ordinance for the purpose of constructing a Redundant Well in a Public Water Supply System if the Redundant Well:

a. withdraws water from the same Groundwater source as the original well; and

b. is required by a State, federal, or Tribal agency.

6. The priority date of the Redundant Well is the same as the priority date of the original well. Only one well may be used at one time.

7. Within 60 days of completion of a Redundant Well, the Appropriator shall file a Notice of Construction of Redundant Well with the Office of the Engineer on a form provided by the Board. The Engineer or Designee shall review and process the Notice pursuant to the procedures set forth in subsection (2) of this Section.

8. If a Notice of Construction of Redundant Well is not completed within the time allowed, the Appropriator

shall:

a. cease appropriation of water from the Redundant Well pending approval by the Engineer or Designee; and

b. submit an application for a Change in Use authorization pursuant to Section 2-2-104 of this Ordinance; or

c. comply with the well abandonment procedures, standards and rules adopted by the board of water well contractors pursuant to 37-43-202, MCA, or any successor procedures, standards and rules that are promulgated in State law.

9. Any Appropriator aggrieved by a determination that a corrected Notice required by subsection (2) or (7) of this Section, as applicable, is defective may appeal that determination to the Board by filing a notice of appeal to the Board within 30 days of the rejection of the corrected Notice. To be filed, a notice must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing.

10. Any appeal to the Board filed pursuant to subsection (9) of this Section shall be conducted pursuant to the provisions of Section 3-1-104 of this Ordinance. If such an appeal is filed, the Engineer shall be the appellee.

2-2-116. Appropriation Rights for Stock Water Allowances.

1. Appropriation Rights for Stock Water Allowances include Stock Water Well Allowances, Stock Water Pit Allowances, and Stock Water Tank Served by Surface Water Allowances.

2. A Stock Water Well Allowance may be sourced from either Wells or Developed Springs.

3. A Stock Water Pit Allowance may be sourced from Groundwater seepage or a non-perennial stream.

4. A Stock Water Tank Served by Surface Water Allowance may be sourced from a perennial or non-perennial stream.

5. Before appropriating water for a Stock Water Well, approval from the Engineer is required. The Engineer may approve a Stock Water Well Allowance if:

a. the Well construction complies with the requirements of Section 1-1-111 of this Ordinance;

b. the maximum flow rate is 35 gallons per minute or less;

c. the maximum annual diverted volume is 2.4 acre-feet or less;

d. the means of diversion is a single Well or Developed Spring;

e. the well is not physically connected to a Home or Business;

f. the means of diversion includes Well Shaft Casing; and

g. Stock Water use associated with the Appropriation is dispensed using Stock Tanks.

6. Before appropriating water for a Stock Water Pit Allowance, approval from the Engineer is required. The Engineer can approve a Stock Water Pit allowance if:

a. the capacity of the Stock Water Pit is 5 acre feet or less;

b. the maximum annual appropriated volume is 10 acre feet or less;

c. the Stock Water Pit Allowance is sourced from Groundwater seepage, a non-perennial stream, or both, provided that a ditch or pipeline is not used;

d. the Stock Water Pit Allowance is constructed on and accessible to a parcel of land 40 acres or larger and owned or under control of the applicant; and

e. the construction of the means of diversion complies with Tribal Ordinance 87(A) (Aquatic Lands Conservation Ordinance).

7. Before appropriating water for a Stock Water Tank Served by Surface Water Allowance, approval from the Engineer is required. The Engineer can approve a Stock Water Tank Served by Surface Water Allowance if:

a. the maximum flow rate is 10 gallons per minute or less;

b. the combined maximum annual diverted volume is 2.4 acre-feet or less;

c. the means of conveyance is a fully contained pipe or hose. Open ditch conveyance is not allowed;

d. the construction of the means of diversion complies with Tribal Ordinance 87(A) (Aquatic Lands Conservation Ordinance); and

e. Stock Water associated with the appropriation is dispensed using one or more Stock Tanks.

8. An applicant must file a completed Application for a Stock Water Allowance with the Office of the Engineer and obtain approval from the Engineer before developing and appropriating water for Stock Water use pursuant to this Section. A complete application shall also include:

a. proof that the applicant has the possessory interest or the written consent of the Person(s) with possessory interest in the property where the point of diversion is located and where the water is to be put to beneficial use, and property rights in the diversion Works; and

b. a site-map that shows, in addition to the requirements of Section 1-1-110(12) of this Ordinance, the location of all proposed Stock Water Allowance development(s) including latitude and longitude in decimal degrees. The map must include the entire property boundaries where the Stock Water Allowance development

is proposed, or a minimum radius of 500 feet from any proposed Stock Water Allowance development, whichever is greater, and include any of the following that are in existence or are proposed by the applicant:

i. well(s), Pits and Stock Tanks including purpose of each;

ii. buildings on the site, including identification of Well connections;

iii. property lines and ownerships; and

iv. means of conveyance, water right points of diversions, and surface water features.

9. Upon receipt of a completed application form complying with subsection (8) of this Section, the Office of the Engineer shall date stamp the application form.

10. The Engineer or Designee shall review the application within 30 days of the date stamped on the application pursuant to subsection (9) of this Section, and within that timeframe may either approve the application or return a defective application to the applicant with a written explanation of the defects. If a corrected application is submitted within 30 days of its return by the Office of the Engineer, no new filing fee shall be required. Upon receiving a corrected application, which shall be date stamped by the Office of the Engineer upon receipt, the Engineer or Designee has 30 days from the date stamped on the corrected application pursuant to this subsection (10) to approve or deny the application.

11. If the Engineer or Designee does not approve or return an application within 30 days of the date stamped on the application pursuant to subsection (9) of this Section, the application shall be deemed approved. If the Engineer or Designee does not approve or deny a corrected application within 30 days of the date stamped on the application pursuant to subsection (10) of this Section, the application shall be deemed approved.

12. Once an applicant meets the requirements of subsections (5) through (9) of this Section, as applicable, and an application is approved by the Engineer or Designee under subsection (10) or (11) of this Section, the Office of the Engineer shall issue an authorization to develop a Stock Water Allowance. The authorization to develop a Stock Water Allowance entitles an Appropriator to construct the authorized type of Stock Water Allowance within, but not to exceed, one year of the date of approval.

13. An Appropriation Right for a Stock Water Allowance becomes valid and final when, within 120 days of completing the diversion Works and putting the water to beneficial use, an Appropriator files a Stock Water Allowance completion form accurately and completely. The completion form for a Stock Water Well Allowance must include a copy of the companion Well Log Report(s), and must identify the as-built attributes of any Well, Pit or Stock Tank constructed. If the as-built attributes are less than or equal to the size of the Allowance for which the applicant originally applied, a Certificate of Stock Water Allowance shall be issued for the as-built attributes.

No Certificate of Stock Water Allowance may be issued if the as-built system exceeds the volumes or flow rates set forth in subsections (5), (6) or (7) of this Section, as applicable.

14. If an Appropriation Right for a Stock Water Allowance is revoked by the Board pursuant to the provisions of Section 3-1-112(3) of this Ordinance, or is determined to be abandoned pursuant to the provisions of Sections 2-1-111 and 2-1-112 of this Ordinance, or is voluntarily abandoned, the Appropriator shall, within 180 days of the revocation or voluntary abandonment, fill in and rehabilitate any Pits, Pit-dams, Constructed Ponds, or Reservoirs associated with the revoked or abandoned Appropriation Right for a Stock Water Allowance, and shall, within 180 days of the revocation or voluntary abandonment, seal any tanks or supply lines associated with the revoked or abandoned Appropriation Right for a Stock Water Allowance.

2-2-117. Appropriation Rights for Domestic Allowances for Homes and Businesses; process for application, review, and issuance.

1. Appropriation Rights for Domestic Allowances include Individual Domestic Allowances, Shared Domestic Allowances and Development Domestic Allowances. An Individual Domestic Allowance may be used only to serve an individual Home or Business. A Shared Domestic Allowance may be used only to serve no less than two and no more than three Homes and/or Businesses. A Development Domestic Allowance may be used only to serve a Development.

2. A Domestic Allowance may be sourced from either Wells or Developed Springs.

3. A Domestic Allowance may not be used to fill or maintain Pits, Pit-Dams, Constructed Ponds, or Reservoirs.

4. Before appropriating water for Domestic Use for an Individual Domestic Allowance, approval from the Engineer is required. The Engineer may approve an Individual Domestic Allowance if:

a. the Well construction complies with the requirements of Section 1-1-111 of this Ordinance;

b. the maximum flow rate is 35 gallons per minute or less;

c. the maximum annual diverted volume is 2.4 acre-feet or less;

d. the means of diversion is a single Well or Developed Spring;

e. the Well is physically connected to and serves one and only one Home or Business;

f. the means of diversion includes Well Shaft Casing;

g. Stock Water use associated with the allowance is dispensed using Stock Tanks; and

h. the amount of land to be irrigated by the allowance is 0.7 acres or less.

5. Before appropriating water for a Shared Domestic Allowance, approval from the Engineer is required.

The Engineer may approve a Shared Domestic Allowance if:

a. the Well construction complies with the requirements of Section 1-1-111 of this Ordinance;

b. the maximum flow rate is 35 gallons per minute or less;

c. the maximum annual diverted volume is 2.4 acre-feet or less;

d. the means of diversion is a single Well or Developed Spring;

e. the Well is physically connected to not less than two and not more than three Homes and/or Businesses that are not a Development;

f. the means of diversion includes Well Shaft Casing;

g. Stock Water use associated with the allowance is dispensed using Stock Tanks;

h. if the Well is connected to two homes and/or businesses, the amount of land to be irrigated with the allowances is 0.5 acres or less. If the well is connected to three Homes and/or Businesses, the amount of land to be irrigated by the allowance is 0.75 acres or less; and

i. the application includes a copy of the Shared Well Agreement signed by all parties.

6. Before appropriating water for a Development Domestic Allowance, approval from the Engineer is required. The Engineer may approve a Development Domestic Allowance if:

a. the Well construction complies with the requirements of Section 1-1-111 of this Ordinance;

b. the maximum flow rate from each Well or Developed Spring is 35 gallons per minute or less;

c. the combined maximum annual diverted volume from all wells and Developed Springs is 10 acre-feet or less;

d. Measurement devices approved by the Engineer and capable of recording cumulative volumes are installed on each Well or Developed Spring;

e. the means of diversion is one or more Wells and/or Developed Springs not to exceed one Well or Developed Spring per Home or Business within the Development;

f. the means of diversion includes Well Shaft Casing;

g. the allowance is physically connected to multiple Homes and/or Businesses that together constitute a Development;

h. Stock Water use associated with the allowance is dispensed using Stock Tanks;

i. the amount of land to be irrigated with the allowances is limited to 0.25 acres or less for each Home or Business within the Development;

j. the application includes a copy of any Shared Well Agreement(s) signed by all parties, if applicable;

k. the water supply requirements for all Homes and Businesses within the Development are satisfied by the allowance; and

l. the applicant includes a copy of the development plan, plat, or equivalent as required by the associated county government.

7. The owner(s) or operator(s) of a Development Domestic Allowance must submit a Development Domestic Allowance Water Measurement Report by March 31st of the year following the year covered by the report.

8. An applicant must file a completed Application for a Domestic Allowance and obtain approval from the Engineer before drilling any Well(s) or developing any spring(s) and putting water to use pursuant to this Section. A completed application shall also include:

a. proof that the applicant has a possessory interest or the written consent of the Person(s) with possessory interest in the property where the point of diversion is located and where the water is to be put to beneficial use, and property rights in the diversion Works; and

b. a site-map that shows, in addition to the requirements of Section 1-1-110(12) of this Ordinance, the location of all proposed Wells and Developed Springs including latitude and longitude in decimal degrees. The map must include the entire property boundaries where the Well associated with the Domestic Allowance is proposed, or a minimum of 500 feet in radius around the proposed Well(s) or Developed Spring(s), whichever is greater, and include any existing or proposed by the applicant:

i. Well(s) and Stock Tanks, including purpose of each well;

ii. sewage facilities including septic tanks and drainfields;

iii. buildings on the site, including identification of Well connections;

iv. property lines and ownerships;

v. irrigated acres per lot or unit Well(s); and

vi. means of conveyance, water right points of diversions, and surface water features.

9. Upon receipt of a completed application form complying with subsection (8) of this Section, the Office of the Engineer shall date stamp the application form.

10. The Engineer or Designee shall review the application within 30 days of the date stamped on the application pursuant to subsection (9) of this Section, and within that timeframe may either approve the application or return a defective application to the applicant, together with a written explanation of the defects. If a corrected application is submitted within 30 days of its return by the Office of the Engineer, no new filing fee

shall be required. Upon receiving a corrected application, which shall be date stamped by the Office of the Engineer upon receipt, the Engineer or Designee has 30 days from the date stamped on the corrected application pursuant to this subsection (10) to approve or deny the application.

11. If the Engineer or Designee does not approve or return an application within 30 days of the date stamped on the application pursuant to subsection (9) of this Section, the application shall be deemed approved. If the Engineer or Designee does not approve or deny a corrected application within 30 days of the date stamped on it pursuant to subsection (10) of this Section, the application shall be deemed approved.

12. Once an applicant meets the requirements of subsections (4), (5), or (6) of this Section, as applicable, as well as the requirements of subsection (8) of this Section, and an application is approved by the Engineer or Designee under subsection (10) or (11) of this Section, the Office of the Engineer shall issue an authorization to develop a Domestic Allowance. The authorization to develop a Domestic Allowance entitles an Appropriator to construct the authorized type of Domestic Allowance within, but not to exceed, one year of the date of approval.

13. An Appropriation Right for a Domestic Allowance becomes valid and final when, within 120 days of completing the Well(s) or Developed Spring(s) and putting the water to beneficial use, an Appropriator files a Domestic Allowance completion form accurately and completely. The completion form must also include a copy of the companion Well Log Report(s), and must identify the as-build attributes of any Well or Stock Tank constructed. If the as-built attributes are less than or equal to the size of the allowance for which the applicant originally applied, a Certificate of Domestic Allowance shall be issued for the as-built attributes. No Certificate of Domestic Allowance may be issued if the as-built system exceeds the volumes or flow rates set forth in subsections (4), (5) or (6) of this Section, as applicable.

14. If an Appropriation Right for a Domestic Allowance is revoked by the Board pursuant to the provisions of Section 3-1-112(3) of this Ordinance, or is determined to be abandoned pursuant to the provisions of Sections 2-1-111 and 2-1-112 of this Ordinance, or is voluntarily abandoned, the Appropriator shall, within 180 days of the revocation or voluntary abandonment, follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202, MCA, or any successor procedures, standards and rules that are promulgated in State law, for any Well associated with the revoked or abandoned Appropriation Right for a Domestic Allowance.

2-2-118. Process for development of new uses from Flathead System Compact Water.

1. Subject to the terms and conditions of the Compact, the Tribal Council or its delegate, or any Person with the written consent of the Tribal Council or its delegate, may apply to utilize Flathead System Compact Water

for any beneficial use within the Reservation by submitting a correct and complete application to the Office of the Engineer.

2. A correct and complete application for a use of Flathead System Compact Water shall contain the following information:

a. the name of the applicant;

b. a description of the proposed purpose of use;

c. the point of diversion

d. the means of diversion

e. the place of use;

f. the flow rate, volume diverted, and volume consumed;

g. the means of conveyance;

h. the period of use;

i. the duration or term of the proposed use;

j. a project plan, including a proposed completion period and, if applicable, a list of water rights to be used in conjunction with or to be replaced by the proposed use of Flathead System Compact Water for which the application is being filed;

k. a map depicting all the features described in this subsection (2); and

l. if the applicant is not the Tribal Council or its delegate, written authorization from the Tribal Council or its delegate to submit the application.

3. Upon receipt of a completed application for the use of Flathead System Compact Water, the Office of the Engineer shall date stamp it.

4. Staff shall analyze the application for the use of Flathead System Compact Water within 180 days of the date stamped on the application pursuant to subsection (3) of this Section using the tools and techniques identified in Section 2-2-107(2) of this Ordinance to determine compliance with the criteria identified in Section 2-2-102(2)(b) through (f) of this Ordinance.

5. All information relied upon by Staff in analyzing an application pursuant to this Section shall be documented in the application file.

6. Staff, using information from the application as well as their own compilation of independent resources and analysis, shall draft a recommended decision with findings of fact and conclusions of law determining whether the application satisfies the criteria set forth in Section 2-2-102(2)(b) through (f) of this Ordinance.

7. If the recommended decision is to grant the application, a summary of the application and the recommended decision shall be publicly noticed by the Office of the Engineer once via legal notice in a newspaper of general circulation on the Reservation and shall be posted on the Board's website for a period of 45 days from the date the recommended decision is issued, during which time objections may be filed with the Engineer. If no objections are filed, or if all filed objections are withdrawn prior to being ruled upon, the application shall be granted by the Engineer within 10 days after expiration of the time for filing objections, or after the unconditional withdrawal of the last objection, whichever date is later.

8. If the recommended decision is to deny the application, the applicant may appeal the recommended decision to the Engineer pursuant to the provisions of Section 2-2-109 of this Ordinance.

9. If the recommended decision is to grant the application with conditions, the application shall be noticed to the public pursuant to the provisions of subsection (7) of this Section unless the applicant withdraws the application within 30 days of the issuance of the recommended decision or appeals the recommended decision to the Engineer pursuant to the provisions of Section 2-2-109 of this Ordinance. The application filing fee shall not be refunded upon withdrawal.

10. To be valid for processing, an objection to an application for the use of Flathead System Compact Water must assert and describe how the proposed development of Flathead System Compact Water fails to comply with one or more of the criteria set forth in Section 2-2-102(2)(b) through (f) of this Ordinance. Any such valid objection shall be resolved pursuant to the procedures set forth in Sections 2-2-110 through 2-2-112 of this Ordinance, provided however, that the burden of proof in the hearing before the Engineer or Designee shall be on the objector to prove by a preponderance of the evidence that the application fails to comply with one or more of the criteria set forth in Section 2-2-102(2)(b) through (f) of this Ordinance.

11. Unless an objection to the application is sustained, the application shall be granted within 10 days of expiration of the time to appeal the decision relating to any objection or after the exhaustion of the objector's last appeal, whichever date is later.

12. The priority date of any use of Flathead System Compact Water is the date of the Tribes' Flathead System Compact Water right as set forth in Article III.C.1.c of the Compact.

2-2-119. Appropriation Rights for Non-consumptive Geothermal Heating or Cooling Exchange Wells.

1. Appropriation Rights may be issued for non-consumptive geothermal heating or cooling exchange Wells with a maximum appropriation of 350 gallons a minute or less if all of the water extracted is returned without delay to the same source aquifer, if the distance between the extraction well and both the nearest existing well

and any hydraulically connected surface waters is more than twice the distance between the extraction well and the Injection Well, and if all Well construction complies with the requirements of Section 1-1-111 of this Ordinance. Before appropriating water for a use described in this subsection (1), approval of the Engineer is required.

2. An applicant must file a completed application form and obtain approval from the Engineer before drilling any Well(s) or developing any spring(s) and putting water to use pursuant to this Section. A completed application shall also include:

a. proof that the applicant has the possessory interest or the written consent of the Person(s) with possessory interest in the property where the point of diversion is located and where the water is to be put to beneficial use, and property rights in the diversion Works; and

b. a site-map showing the location of all proposed wells including latitude and longitude in decimal degrees. The map must also include the entire property boundaries where the Wells are proposed, or a minimum of 500 feet in radius around the proposed Well(s) or spring(s), whichever is greater, and include any of the following that exist or are proposed by the applicant:

i. well(s) including purpose of each well;

ii. sewage facilities including septic tanks and drainfields;

iii. buildings on the site, including identification of Well connections;

iv. property lines and ownerships;

v. irrigated acres per lot or unit well(s); and

vi. means of conveyance, water right points of diversions, and surface water features.

3. Upon receipt of a completed application form complying with subsection (2) of this Section, the Office of the Engineer shall date stamp the application form.

4. The Engineer or Designee shall review the application within 45 days of the date stamped on the application pursuant to subsection (3) of this Section, and within that timeframe may either approve the application or return a defective application to the applicant, together with a written explanation of the defects. If a corrected application is submitted within 30 days of its return by the Office of the Engineer, no new filing fee shall be required. Upon receiving a corrected application, which shall be date stamped by the Office of the Engineer upon receipt, the Engineer or Designee has 30 days from the date stamped on the corrected application pursuant to this subsection (4) to approve or deny the application.

5. If the Engineer or Designee does not approve or return an application within 45 days of the date

stamped on the application pursuant to subsection (3) of this Section, the application shall be deemed approved. If the Engineer or Designee does not approve or deny a corrected application within 30 days of the date stamped on this application pursuant to subsection (4) of this Section, the application shall be deemed approved.

6. Once an applicant meets the requirements of subsection (1) of this Section and the application is approved pursuant to subsection (4) or (5) of this Section, as applicable, the Engineer shall issue an authorization to develop the Appropriation Right for a Heating/Cooling Exchange Well.

7. An Appropriation Right for a Heating/Cooling Exchange Well becomes valid and final when, within 120 days of completing the Well(s) or Developed Spring(s) and putting the water to beneficial use, an Appropriator files a Heating/Cooling Exchange completion form accurately and completely. The completion form must also include a copy of the companion Well Log Report(s) for the extraction Well and the Injection Well.

8. If an Appropriation Right for a Heating/Cooling Exchange Well is revoked by the Board pursuant to the provisions of Section 3-1-112(3) of this Ordinance, or is determined to be abandoned pursuant to the provisions of Sections 2-1-111 and 2-1-112 of this Ordinance, or is voluntarily abandoned, the Appropriator shall, within 180 days of the revocation or voluntary abandonment, follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202, MCA, or any successor procedures, standards and rules that are promulgated in State law, for any Well associated with the revoked or abandoned Appropriation Right for a Heating/Cooling Exchange Well.

2-2-120. Temporary Emergency Appropriations.

1. A Temporary Emergency Appropriation may be made without prior approval from the Board, but the use must cease immediately when the water is no longer required to meet the emergency.

2. A Temporary Emergency Appropriation does not include the use of water for the ordinary operation and maintenance of any trade or business, including but not limited to agricultural production.

3. Within 60 days after the cessation of a Temporary Emergency Appropriation, the Appropriator shall notify the Board of the use to which the water was put, the dates of use, and the estimated amount of water used.

4. Except as set forth in subsection (5) of this Section, a Temporary Emergency Appropriation may not include the use of Enclosed Storage.

5. When the Temporary Emergency Appropriation is made by a local governmental fire agency organized under Title 7, chapter 33, MCA, or applicable Tribal law, and the Temporary Emergency Appropriation is used only for emergency fire protection, the Temporary Emergency Appropriation may include enclosed storage.

2-2-121. Short-term use of a portion of the Tribal Water Right for road construction or dust abatement.

The Tribes, or a Person with the written consent of the Tribes, may use a portion of the Tribal Water Right for road construction or dust abatement purposes, without the prior approval of the Board, subject to the following provisions:

1. For uses of 20,000 gallons or less per day from a single source of supply, no notice is required;

2. For uses greater than 20,000 gallons per day and less than 60,000 gallons per day from a single source of supply, a notice must be posted at the site of the diversion or withdrawal for the entire period during which water is being diverted or withdrawn. The notice posted shall be clearly legible and visible and provide the following information:

a. source of water;

b. purpose of use;

c. starting and ending date of diversion;

d. place of use;

e. diversion flow rate;

f. maximum volume of water to be diverted or withdrawn per day; and

g. name and contact information for the user of the water and for the Board.

3. For uses greater than 60,000 gallons per day from a single source of supply, the Board must be notified at least 10 days but not more than 45 days in advance of the initial use of the water. Notice must be posted at the site of the diversion or withdrawal, as provided in subsection (2) of this Section. Notification to the Board must provide the following information:

a. source of water;

b. legal description of the point of diversion or withdrawal;

c. place of use;

d. map showing preceding three items;

e. purpose of use;

f. starting and ending date of use;

g. diversion flow rate;

h. maximum volume of water to be diverted or withdrawn per day; and

i. name and contact information for the user.

4. The diversion or withdrawal of water pursuant to this Section shall not adversely affect any legal use of water in existence as of the date of the diversion or withdrawal; and

5. If notified that the diversion or withdrawal of water pursuant to this Section is adversely affecting any legal use of water in existence as of the date of the diversion or withdrawal, the user will immediately cease diversion or withdrawal from that source of supply. To resume the diversion or withdrawal, the user may move the diversion or withdrawal to another source of supply, or may satisfy the Board and the holder(s) of the affected legal use(s) of water in existence as of the date of the diversion or withdrawal that use will not cause adverse effects.

2-2-122. Short-term use of an appropriation right that is not part of the Tribal Water Right for road construction or dust abatement.

1. An Appropriator may lease, for a term not to exceed 90 days, all or part of an Appropriation Right or Existing Use that is not part of the Tribal Water Right for road construction or dust abatement without the prior approval of the Board, subject to the requirements of this Section. The lease agreement must include the following information:

a. the name and address of the lessee;

b. the name of the owner of the Appropriation Right or Existing Use;

c. the number of the Appropriation Right or Existing Use;

d. the purpose of use of water for which the lease is being made;

e. the source of water to be appropriated;

f. the starting and ending date of the proposed use of water;

g. the proposed point of diversion;

h. the proposed place of use;

i. the diversion flow rate and volume of water to be used during the period of use; and

j. a description of how the prior use of water will be reduced to accommodate the temporary change of use of the Appropriation Right or Existing Use, including the number and location of acres to be removed from irrigation, if applicable.

2. A short-term lease of an Appropriation Right or Existing Use under this Section may not exceed 60,000 gallons a day or the amount of the Appropriation Right or Existing Use, whichever is less. Any combination of short-term leases cannot exceed 120,000 gallons a day for one project.

3. Except as provided in subsection (7) of this Section, the following information must be submitted to the Board at least 2 days prior to the use of water by a lessee under this Section:

a. a copy of the Publication notice or copies of the individual notice required under subsection (4) of this

Section;

b. a copy of the lease agreement; and

c. for a combination of short-term leases greater than 60,000 gallons a day for one project, an analysis by the lessee of any potential adverse effects and a description of planned actions to mitigate any potential adverse effects to Appropriators in the area of the proposed point of diversion.

4. Except as provided in subsection (7) of this Section, the lessee of an Appropriation Right or Existing Use under this section shall, 30 days prior to the use of the water, publish a notice of the proposed use of water once in a newspaper of general circulation in the area of the diversion or mail individual notice to potentially affected Appropriators in the area of the proposed point of diversion. The published notice or the individual notice must contain the information listed in subsections (1)(a) through (1)(j) and (3)(c) of this Section.

5. Complaints regarding temporary use

a. an Appropriator, whether the water right is prior or subsequent in priority to the short-term lease acquired by a Person under this Section, who cannot satisfy in full the Appropriator's right during the time that the short-term lessee is diverting water, may make a complaint to the Engineer pursuant to Section 3-1-102 of this Ordinance and cause the short-term lessee's diversion to be discontinued.

b. the diversion is discontinued until the complaining Appropriator's water right is satisfied or until the lessee establishes to the Engineer that the discontinuance has had no effect on the complaining Appropriator's water right. Upon establishment that discontinuance has not had an effect, the Engineer shall enter an order allowing the diversion to continue.

6. This Section does not limit the remedies available to an Appropriator to enjoin or to seek damages from a Person appropriating water under this Section.

7. a. a consolidated city-county or a county or an incorporated city or town is not subject to the requirements of subsections (3)(a) and (4) of this Section when conducting dust abatement that was not scheduled or contracted for 30 days or more prior to the use of the water.

b. a consolidated city-county or a county or an incorporated city or town that does not publish notice as provided in subsection (4) of this Section shall post a copy of the lease agreement at the point of diversion at least 24 hours prior to and during the time that water is diverted.

2-2-123. Wetland Protective Appropriation Rights.

1. Pursuant to the provisions of Sections 2-2-101 et seq. of this Ordinance, a Wetland Protective Appropriation Right for a Natural Wetland or Restored Natural Wetland may be issued, subject to the following

limitations:

a. except as authorized by Appropriation Rights issued pursuant to Section 1-1-107(1)(k) of this Ordinance, irrigation return flows may not be used as a source for an Appropriation Right issued pursuant to this Section.

b. No Wetland Protective Appropriation Right shall be issued for any Wetland using Pits, Pit-dams, or Constructed Ponds.

c. No Wetland Protective Appropriation Right shall be issued for any Wetland occurring solely as a result of seepage from irrigation reservoirs, canals, laterals or ditches.

d. No Wetland Protective Appropriation Right shall be used for any other purpose and shall not be changed to another purpose.

2. Wetlands eligible for Wetlands Protective Appropriation Rights are:

a. Those Wetlands identified on the map of Wetlands eligible for Wetlands Protective Appropriations Rights (available from the Office of the Engineer); or

b. Those Wetlands not identified on the Map if:

i. the proposed use is a Restored Natural Wetland;

ii. the applicant provides a site-specific Wetlands delineation, using any delineation method approved by the Engineer, that includes:

(1) the total number of acres and a detailed map showing the proposed boundary of the Wetland for which the Wetland Protective Appropriation Right is being applied; and

(2) an identification of the Wetlands delineation method used, along with supporting field data.

2-2-124. Wetland Quantified Appropriation Rights.

1. Pursuant to the provisions of Sections 2-2-101 et seq. of this Ordinance, an Appropriations Right or Change in Use authorization to divert, impound, or withdraw surface water or Groundwater for a Wetland purpose may be issued.

2. All Wetlands that utilize man-made diversions, impoundments, withdrawals, excavations, or other artificial means for the purposes of Appropriation for either all or a portion of a Wetland water supply in excess of a Natural Wetland water supply or Restored Natural Wetland water supply shall obtain, in advance of Appropriation, an Appropriation Right or Change in Use authorization for that Wetland purpose.

3. In addition to the information required by Sections 1-1-110 and 2-2-104 of this Ordinance, an application for an Appropriation Right or Change in Use authorization pursuant to this section shall include the

following information:

a. A delineation of pre-project existing Wetlands and post-project Wetlands using a Wetland delineation method approved by the Engineer. The delineation shall describe the following pre-project and post-project Wetland attributes:

i. the outer Wetland boundary and area in acres;

ii. the boundaries of permanently inundated areas, depth in feet, and area in acres;

iii. the boundaries of seasonally inundated areas, period of inundation, depth in feet, and area in acres;

iv. the boundaries of permanently saturated areas and area in acres;

v. the boundaries of seasonally saturated areas, period of saturation, and area in acres; and

vi. Wetland vegetation boundaries and area in acres.

b. The location and description of the manmade diversions, impoundments; withdrawals, excavations, or other artificial means for the purposes of Appropriation;

c. The flow rate and volume of water to be appropriated in monthly time steps; however, the Office of the Engineer may require a more frequent quantification time step;

d. The consumptive volume for each Wetland attribute delineated pursuant to Section 2-2-124(a) of this Ordinance in monthly time steps; however, the Office of the Engineer may require a more frequent quantification time step;

e. non-consumed water, including flow rate and volume estimates, and a description of return flows and their eventual destination and timing; and

f. the volume of Natural Wetland water supply, if applicable, in monthly time steps.

2-2-125. Notice of Trust Status Conversion for Lands with Appurtenant Water Rights Arising Under State Law Acquired by the Tribes. As provided for by the Compact, Article III.H, the following process shall be used to notify the Water Management Board of the transfer of Tribally-owned fee land to trust status:

1. Starting upon the Effective Date of the Compact, the Tribes may file a Trust Transfer form with the Board for any lands acquired by the Tribes with appurtenant Water Rights Arising Under State Law that have been taken into trust by the United States on behalf of the Tribes.

2. A copy of the deed transferring the fee land to trust status shall be attached to the form.

2-2-126. Water Management Board Adjustment of Priority Date Pursuant to Compact. Upon submission of a Trust Transfer form by the Tribes, the priority date of any Water Rights Arising Under State Law appurtenant to land identified on the Trust Transfer form shall be adjusted by the Water Management Board to July 16, 1855.

The Board shall cause the adjusted priority date to be entered into the Reservation water rights database identified in Section 1-1-108 of this Ordinance.

2-2-127. Tribal Utilization of Water Right with Adjusted Priority Date. Any water right whose priority date is adjusted pursuant to Section 2-2-126 of this Ordinance shall be subject to the following use conditions:

1. The water right must be used as historically used; or

2. Changes to the water right must be made pursuant to the provisions set for the in Article IV.B.4 of the Compact and Section 2-2-101 et seq. of this Law of Administration.

2-2-128. Public Water Supply Reporting Requirements

1. The following shall comply with the reporting requirements set forth in subsection (2) of this Section:

a. any new Public Water Supply System approved pursuant to this Ordinance;

b. any Public Water Supply System in existence prior to the effective date of this Ordinance whose authorized use is expanded pursuant to this Ordinance.

2. On an annual basis, any entity responsible for the operation of a Public Water Supply System identified in subsection (1) of this Section shall report to the Office of the Engineer the total volume by month of pumping or diversion of the Public Water Supply System.

## Chapter III Enforcement

3-1-101. Scope

1. The enforcement powers set forth in this Chapter apply to the resolution of disputes between Appropriators who are not served by the Flathead Indian Irrigation Project, or between any Appropriators who are not served by the FIIP and any water user(s) or holders of Existing Rights, if any, whose use of water is served by the FIIP. Disputes exclusively between or among users whose water is delivered by the FIIP shall remain subject to the oversight of the Project Operator and the Enforcement provisions of this Ordinance shall not apply. The powers and duties set forth in this Chapter, as they extend to uses of the Tribal Water Right within the FIIP, extend only to the resolution of disputes concerning the delivery of water to FIIP diversion facilities and shall not extend to the administration of that water in FIIP facilities or on lands served by the FIIP, which shall remain subject to the oversight of the Project Operator.

2. Nothing in this Chapter, or in the Ordinance, is intended to preclude a water user from working informally with other water users, any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance, or the Engineer, to resolve disputes or real-time water operation issues without recourse to the provisions of this Chapter. A synopsis of all such resolutions between a water user and any Water Commissioner

or the Engineer shall be reduced to writing, and dated, a copy of which shall be kept in the Office of the Engineer and available for public inspection. A synopsis of any such resolution between or among water users may be reduced to writing. Provided, however, that any water user not party to any such informal resolution who believes himself or herself to be injured by the informal resolution may seek redress by invoking the provisions of this Chapter, subject to the limitation concerning FIIP water use set forth in subsection (1) of this Section, to challenge the informal resolution.

3. Any of the timeframes set forth in Sections 3-1-102 through 3-1-107 of this Ordinance may be extended upon mutual agreement of the parties to any dispute.

3-1-102. Complaint to the Engineer Regarding Actions or Inactions Between Appropriators.

1. Subject to the limitation concerning FIIP water use set forth in Section 3-1-101(1) of this Ordinance, any Appropriator aggrieved by the action or inaction of any other Appropriator, or by any Person the Complainant believes is Wasting water to the detriment of a right to use water the Complainant possesses, may file a Complaint with the Engineer. Such Complaint must be submitted in writing and describe specifically the action or inaction being complained of and the justification for the Complaint.

2. Upon receipt of a Complaint, the Office of the Engineer shall date stamp it and return a copy to the Complainant along with a written statement indicating that informal resolution of the dispute between the Appropriators, or between an Appropriator and a Person accused of Wasting water, may provide a more timely and cost-effective remedy than having the Complaint adjudicated by the Engineer.

3. Within 3 days of the receipt of the Complaint, the Office of the Engineer shall serve a copy of it on the Appropriator or other Person whose action or inaction is being complained of (the "Respondent"), and shall post notice of the Complaint on the Board's website. The notice to the Respondent shall include a written statement indicating that informal resolution of the dispute between the Complainant and the Respondent may provide a more timely and cost-effective remedy than having the petition adjudicated by the Engineer.

3-1-103. Resolution of Complaint.

1. No later than 15 days after the provision of notice of the Complaint to the Respondent, pursuant to Section 3-1-102(3) of this Ordinance, the Engineer or Designee shall hold a hearing on the Complaint, provided, however that the Engineer or Designee may take an additional 10 days before holding the hearing to perform such independent investigation into the Complaint as the Engineer or Designee deems appropriate. At such time, both the Complainant and the Respondent shall explain their positions concerning the matter complained of. All evidence that, in the opinion of the Engineer or Designee, possesses probative value shall be admitted, including

hearsay, if it is the type of evidence commonly relied upon by reasonably prudent Persons in the conduct of their normal business affairs. Rules of privilege recognized by law shall be given effect. Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded.

2. A decision by the Engineer or Designee on the Complaint shall be made in writing within 7 days after the completion of the hearing.

3. The decision of the Engineer or Designee may include an award of declaratory relief, and/or the imposition of conditions on the use or exercise of a water right. Such conditions may include, but are not limited to, instructions regarding the proper delivery of water, the installation of measuring devices, the construction of suitable ditches to carry the return waters from any ditch or lands to the main stream or proper waste way, or the mandate of structural changes to diversion structures.

4. Any Complainant or Respondent dissatisfied with the final decision of the Engineer or Designee may appeal to the Board (and become an Appellant) and obtain review of the Engineer's or Designee's decision. A notice of appeal to the Board must be received by the Board within 30 days of the issuance of the Engineer's or Designee's written decision. The decision of the Engineer or Designee shall not be stayed during the pendency of the appeal unless the Board expressly orders such a stay upon motion of the Complainant or Respondent.

3-1-104. Appeal to the Board.

1. Upon receipt of a notice of appeal pursuant to Section 3-1-103(4) of this Ordinance, or any other Section of this Ordinance that provides for appeal to the Board pursuant to the provisions of this Section, the Board, acting through the Office of the Engineer, shall date stamp the notice and return a copy to the Appellant. Within three days of receipt of the notice of appeal, the Board, acting through the Office of the Engineer, shall serve a copy of the notice of appeal on the other party to the dispute (who becomes the Appellee).

2. Either party to the appeal may elect to have oral argument prior to the resolution of the appeal. The Appellant must request oral argument at the time of the filing of the notice of appeal or the Appellant's right to oral argument is waived. The Appellee must request oral argument within 10 days of the Appellee's receipt of the notice of appeal pursuant to subsection (1) of this Section, or the Appellee's right to oral argument is waived. If either party to the appeal requests oral argument, such argument must be held within 60 days of the filing of the notice of appeal, or within 30 days of the receipt of evidence or argument pursuant to subsection (3) or (4) of this Section, whichever date is later.

3. Within 60 days from the filing of the notice of appeal, or any extended period of time, not to exceed 60 days, granted by the Board, the Appellant and Appellee may each submit additional factual evidence and legal

argument concerning the appeal to the Board and shall serve copies of the same on the other party to the dispute.

4. Either party to the appeal shall have 60 days from the date of receipt of the evidence or argument served pursuant to subsection (3) of this Section, or any extended period of time granted by the Board, not to exceed 60 days, to respond in writing to the evidence and argument submitted by the other party to the dispute pursuant to subsection (3) of this Section.

5. If oral argument is held, the argument shall be recorded electronically and an official record maintained.

6. A decision by the Board on the appeal shall be made in writing within 60 days after the completion of oral argument or, if the right to oral argument is waived, within 60 days after the deadline for the submission of evidence and argument pursuant to subsections (3) and (4) of this Section, whichever is later. The written decision shall set forth the ruling of the Board along with a statement of the reasons therefor.

7. In ruling on the appeal, the Board may sustain the decision of the Engineer or Designee, may overturn that decision and set aside any relief ordered by the Engineer or Designee, or may remand the matter to the Engineer or Designee for such further proceedings as may be specified in the Board's written decision.

3-1-105. Petition to the Engineer by Any Appropriator Aggrieved by Actions or Inactions of a Water Commissioner.

1. Any Appropriator aggrieved by the action or inaction or written directive from any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance, may petition the Engineer for relief (and become a Petitioner). Such petition must be submitted in writing and describe with particularity the action, inaction or directive giving rise to the petition and the justification for the petition.

2. Upon receipt of a petition, the Office of the Engineer shall date stamp it and return a copy to the Petitioner along with a written statement indicating that informal resolution of the dispute between the Petitioner and the Water Commissioner may provide a more timely and cost-effective remedy than having the petition adjudicated by the Engineer.

3. Within 3 days of the date stamped on the petition pursuant to subsection (2) of this Section, the Office of the Engineer shall serve a copy of it on the Water Commissioner whose action, inaction or written directive is being petitioned against, and shall post notice of the Petition on the Board's website.

3-1-106. Resolution of Petition.

1. A Petitioner may elect to have the Petition decided on the record after submission of additional evidence and argument, or after hearing. If a Petitioner elects to have a hearing, that request must be made at

the same time as the filing of the Petition or the right to a hearing is waived.

2. The Water Commissioner may elect to have the Petition decided after a hearing. The request for a hearing must be made within 5 days of the Water Commissioner's receipt of notice of the Petition pursuant to Section 3-1-105(3) of this Ordinance or the Water Commissioner's right to a hearing is waived.

3. If either the Petitioner or the Water Commissioner elects to have the Petition resolved after a hearing, the Engineer or Designee shall hold a hearing on the Petition no later than 14 days after the filing of the Petition, or within 14 days of the expiration of the time for the submission of evidence or argument pursuant to subsection (5) of this Section, whichever date is later; provided, however that the Engineer or Designee may take an additional 10 days before holding the hearing to perform such independent investigation into the petition as the Engineer or Designee deems appropriate.

4. Within 5 days from the filing of the Petition, or any extended period of time, not to exceed 5 days, granted by the Engineer, the Petitioner and Commissioner may each submit additional factual evidence and legal argument concerning the Petition to the Engineer or Designee and shall serve copies of the same on the other party to the dispute.

5. Either party to the dispute shall have 5 days from the date of receipt of the evidence or argument served pursuant to subsection (4) of this Section, or any extended period of time granted by the Engineer or Designee, not to exceed 5 days, to respond in writing to the evidence and argument submitted by the other party to the dispute pursuant to subsection (4) of this Section.

6. The Petitioner shall bear the burden of proof before the Engineer or Designee.

7. The hearing shall be recorded electronically and an official record maintained. All evidence that, in the opinion of the Engineer or Designee, possesses probative value shall be admitted, including hearsay, if it is the type of evidence commonly relied upon by reasonably prudent Persons in the conduct of their normal business affairs. Rules of privilege recognized by law shall be given effect. Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded.

8. A decision by the Engineer or Designee on the Petition shall be made in writing within 7 days after the completion of the hearing or, if the right to a hearing is waived, within 7 days after the deadline for the submission of evidence and argument pursuant to subsections (4) and (5) of this Section, whichever is later. If the individual who conducted the hearing becomes unavailable to the Office of the Engineer, a decision may be prepared by an individual who has read the record only if the demeanor of witnesses is considered immaterial by all parties; if any party considers the demeanor of any witness to be material to the resolution of the petition, a new hearing

must be held.

9. The decision of the Engineer or Designee may include an award of declaratory relief, and/or the imposition of conditions on the use or exercise of an Appropriation Right or Existing Use. Such conditions may include, but are not limited to, the installation of measuring devices, the construction of suitable ditches to carry the return waters from any ditch or lands to the main stream or proper waste way, or the mandate of structural changes to diversion structures.

10. Any Petitioner or Commissioner dissatisfied with the final decision of the Engineer or Designee may appeal to the Board (and become an Appellant) and obtain review of the Engineer's or Designee's decision. A notice of appeal to the Board must be received by the Board within 30 days of the issuance of the Engineer's or Designee's written decision.

3-1-107. Appeal to the Board from a Decision on a Petition. The process for appeal to the Board of the Engineer's or Designee's decision on a Petition shall be as set forth in Section 3-1-104 of this Ordinance.

3-1-108. Appeal from a Decision of the Board. The process for appeal from a decision of the Board issued pursuant to Section 3-1-104 of this Ordinance shall be as set forth in Section 2-2-112 of this Ordinance.

3-1-109. Emergency Enforcement Powers of the Engineer. In an Emergency, the Engineer, or any Staff who is so directed by the Engineer, or any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance, shall have the authority to lock, remove, render inoperative, shut down, close, seal, cap, modify, or otherwise control methods of diversions and withdrawals, and obstructions to the flow of water, subject to expedited appeal to the Board by the affected Person, as provided in Section 3-1-110 of this Ordinance.

3-1-110. Additional Enforcement Powers of the Engineer.

1. The Engineer, or any Staff who is so directed by the Engineer, or any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance, may enter upon lands on the Reservation with reasonable notice to the owner or occupant, to investigate and inspect methods of diversion, withdrawal, and other activities affecting water quantity, to install measuring devices at the expense of the water user on surface and Groundwater diversions for the purpose of enforcing and administering this Ordinance, to monitor water use, water quality, and diversion structures.

2. The Engineer, or any Staff who is so directed by the Engineer, or any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance, may take action to prevent the Illegal use of water, including, but not limited to the temporary decommissioning of head gates or other diversion Works.

3. The Engineer may issue written notices of violation to Appropriators and to Illegal users of water for

violations of this Ordinance or of the terms and conditions of any Appropriation Right or Existing Use or of any lawful order of the Engineer or the Board or any action or directive of any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance.

4. Any notice issued pursuant to subsection (3) of this Section shall specify the particular violation or violations, the step(s) to be taken to come into compliance, and identify a reasonable time frame within which such steps are to be taken.

5. In the event of non-compliance with any written notice issued pursuant to subsection (3) of this Section within the specified time frame, the Engineer may move the Board to exercise its powers pursuant to Sections 3-1-112 and 3-1-113 of this Ordinance.

6. Upon receipt of any written recommendation, pursuant to Section 3-1-115(3) of this Ordinance, from any Water Commissioner, the Engineer or Designee may reject the recommendation or may issue notice of intent to hold a hearing to determine whether the imposition of such conditions identified in the recommendation is warranted. The process for the consideration and resolution of any such matter shall be as set forth in Sections 3-1-105 through 3-1-108 of this Ordinance, with the recommendation being treated as a petition, the Water Commissioner as the Petitioner and the affected water user(s) as Respondent(s).

3-1-111. Expedited Appeal to the Board in the Event of Certain Actions by the Engineer.

1. Any Appropriator whose use of water is affected by an action taken pursuant to Section 3-1-109 or 3-1-110(2) of this Ordinance may file a written notice of appeal with the Board (and become an Appellant). The notice of appeal must describe with particularity the action being appealed and the justification for the appeal.

2. The Board must immediately notify the Engineer of the filing of a notice of appeal pursuant to subsection (1) of this Section, and must hear the appeal within 10 days of the notice of appeal being filed.

3. If the Board finds in favor of the Appellant, it may award appropriate relief, including declaratory relief, but not monetary penalties against the Office of the Engineer or any employee thereof, including any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance, acting in either their professional or personal capacities.

3-1-112. Additional Enforcement Powers of the Board. Upon motion by the Engineer, and after notice to any affected Appropriator and the opportunity for all parties to be heard, the Board may:

1. Impose fines, as set forth in Section 3-1-113 of this Ordinance.

2. Impose conditions on the future use of any Appropriation Right to prevent further violation, but only upon a finding that the holder of any such Appropriation Right is violating or has violated any provision of that

Appropriation Right, or is violating or has violated any order issued by the Engineer or any directive of any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance concerning the use of that permit. The process for appeal from any Board decision imposing conditions pursuant to this Section shall be as set forth in Section 2-2-112 of this Ordinance.

3. Revoke or suspend any Appropriation Right, but only upon a finding that the holder of any such Appropriation Right is willfully violating or has willfully violated any provision of that Appropriation Right, or is willfully violating or has willfully violated any order issued by the Engineer concerning the use of that Appropriation Right. The process for appeal from any Board decision revoking or suspending a permit shall be as set forth in Section 2-2-112 of this Ordinance.

3-1-113. Fines.

1. The Board, pursuant to the provisions of this Section, may impose a fine not to exceed $1,000 per violation on any Person who fails to comply with the provisions of this Ordinance, including any written order of the Board or Engineer or written directive of any Water Commissioner.

2. If a Person is using water under the color of law, fines may only be imposed commencing on the day after the resolution of any appeal from the written order of the Board or Engineer or action or written directive of any Water Commissioner whose violation gives rise to the proposed imposition of fines, or the deadline for filing an appeal if no appeal is filed, after receipt of a written notice of violation pursuant to Section 3-1-111(2) of this Ordinance.

3. If a Person is using water Illegally, the Board may impose fines on that Person at any time commencing from the date of that Person's receipt of the notice of violation from the Engineer pursuant to section 3-1-111(3)(a) of this Ordinance, if the Illegal use is not ceased immediately upon receipt of the notice of violation.

4. Each day of violation constitutes a separate violation.

5. The process for appeal from any Board decision imposing fines pursuant to this Section shall be as set forth in Section 2-2-112 of this Ordinance.

3-1-114. Appointment of Water Commissioners. Pursuant to Article IV.I.5.d of the Compact, the Board may appoint one or more Water Commissioners to provide day-to-day administration of water on the Reservation. The appointment shall specify the geographic area for which the commissioner shall have responsibility.

3-1-115. Powers and Duties of Water Commissioners. Subject to the jurisdictional limitation set forth in Article IV.I.5.d.ii of the Compact and Section 3-1-101(1) of this Ordinance, any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance:

1. Shall, consistent with the terms and conditions of the Compact, the federal legislation ratifying the Compact, this Ordinance, and the terms of all applicable Appropriation Rights and Existing Uses, distribute water in the proper priority;

2. Shall, as near as may be practicable, divide, regulate and control the use of the water of all streams, springs, lakes or other sources of water within that Water Commissioner's district to prevent the Waste of water or its use in excess of the volume to which any Appropriator is lawfully entitled, including through the opening and closing of headgates. Whenever a Water Commissioner regulates a headgate to a ditch or the controlling Works of reservoirs, it shall be that Water Commissioner's duty to attach to such headgate or controlling Works a written notice, properly dated and signed, setting forth the fact that such headgate or controlling Works has been properly regulated and is wholly under the Water Commissioner's control and such notice shall be a legal notice to all parties interested in the division and distribution of the water of such ditch or reservoir;

3. Shall notify the Engineer in writing of the non-compliance of any water user with a prior order of the Engineer or the Board or any prior written directive of that Water Commissioner issued pursuant to subsection (4) of this Section;

4. May issue written directives to any Appropriator, or any Illegal user of water, concerning day-to-day actions that must be taken to facilitate the execution of the duties of that Water Commissioner as set forth in subsections (1) and (2) of this Section; and

5. May recommend to the Engineer, in writing, conditions to be placed on the exercise of any Appropriation Right or Existing Use on the Reservation, including the requirement of measuring devices and the necessity of structural changes to diversion or other structures. The Water Commissioner shall serve copies of any such written recommendation on the Appropriator(s) whose Appropriation Right(s) or Existing Use(s) are referenced in the recommendation.

3-1-116. Recourse from Water Commissioner Decisions. Any Person who may be injured by the action or inaction of a Water Commissioner has the right to petition the Engineer pursuant to the provisions of Section 3-1-105 of this Ordinance.

3-1-117. Removal of Water Commissioners. Water Commissioners shall serve at the pleasure of the Board and may be removed by unanimous vote of the Board at any time.

**Section 3.** Section 3-7-211, MCA, is amended to read:

**"3-7-211. Appointment of water commissioners.** ~~The~~ Except as provided in [section 2], the district

court having jurisdiction over the hydrologically interrelated portion of a water division, as described in 85-2-231(3), in which the controversy arises may appoint and supervise a water commissioner as provided for in Title 85, chapter 5."

**Section 4.** Section 85-2-111, MCA, is amended to read:

**"85-2-111. Department powers.** (1) The department may:

~~(1)~~(a) enter into agreements with federal, state, or local agencies necessary to carry out this chapter;

~~(2)~~(b) apply for, accept, administer, and expend funds, grants, gifts, and loans from the federal government or any other public or private source for the purposes of this chapter.

(2) The department shall, pursuant to [sections 1 and 2], recognize the jurisdiction of the Flathead reservation water management board over water rights, including permitting of new uses, changes of existing uses, enforcement of water right calls, and all aspects of enforcement within the exterior boundaries of the Flathead Indian reservation."

**Section 5.** Section 85-2-114, MCA, is amended to read:

**"85-2-114. Judicial enforcement.** (1) If the department ascertains, by a means reasonably considered sufficient by it, that a person is wasting water, using water unlawfully, preventing water from moving to another person having a prior right to use the water, or violating a provision of this chapter, it may petition the district court supervising the distribution of water among appropriators from the source to:

(a) regulate the controlling works of an appropriation as may be necessary to prevent the wasting or unlawful use of water or to secure water to a person having a prior right to its use;

(b) order the person wasting, unlawfully using, or interfering with another's rightful use of the water to cease and desist from doing so and to take steps that may be necessary to remedy the waste, unlawful use, or interference; or

(c) issue a temporary, preliminary, or permanent injunction to prevent a violation of this chapter. Notwithstanding the provisions of Title 27, chapter 19, part 3, a temporary restraining order must be granted if it clearly appears from the specific facts shown by affidavit or by the verified complaint that a provision of this chapter is being violated.

(2) Upon the issuance of an order or injunction, the department may attach to the controlling works a written notice, properly dated and signed, setting forth the fact that the controlling works have been properly

regulated by it. The notice constitutes legal notice to all persons interested in the appropriation or distribution of the water.

(3) The department may also direct its own attorney or request the attorney general or county attorney to bring suit to enjoin the waste, unlawful use, interference, or violation.

(4) The county attorney or the attorney general may bring suit to enjoin the waste, unlawful use, interference, or violation or bring an action under 85-2-122(1) without being requested to do so by the department.

(5) A county attorney who takes action pursuant to subsection (3) or (4) may request assistance from the attorney general.

(6) When enforcing the provisions of this section, the department, the county attorney, and the attorney general shall give priority to protecting the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation.

(7) After considering the provisions of subsection (6), the department may attempt to obtain voluntary compliance through warning, conference, or any other appropriate means before petitioning the district court under subsection (1). An attempt to obtain voluntary compliance under this subsection must extend over a period of at least 7 days and may not exceed 30 working days.

(8) Pursuant to [section 2], the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation."

**Section 6.** Section 85-2-301, MCA, is amended to read:

**"85-2-301. Right to appropriate -- recognition and confirmation of permits issued after July 1, 1973.** (1) After July 1, 1973, a person may not appropriate water except as provided in this chapter. A person may appropriate water only for a beneficial use.

(2) (a) Only the department may appropriate water by permit for transport outside the following river basins:

(i) the Clark Fork River and its tributaries to its confluence with Lake Pend Oreille in Idaho;

(ii) the Kootenai River and its tributaries to its confluence with Kootenay Lake in British Columbia;

(iii) the St. Mary River and its tributaries to its confluence with the Oldman River in Alberta;

(iv) the Little Missouri River and its tributaries to its confluence with Lake Sakakawea in North Dakota;

(v) the Missouri River and its tributaries to its confluence with the Yellowstone River in North Dakota; and

(vi) the Yellowstone River and its tributaries to its confluence with the Missouri River in North Dakota.

(b) The department may lease water subject to this subsection (2) under the provisions of 85-2-141.

(3) A right to appropriate water may not be acquired by any other method, including by adverse use, adverse possession, prescription, or estoppel. The method prescribed by this chapter is exclusive.

(4) All permit actions of the department after July 1, 1973, are recognized and confirmed subject to this part and any terms, conditions, and limitations placed on a permit by the department.

(5) Pursuant to [section 2], the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation."

**Section 7.** Section 85-2-302, MCA, is amended to read:

**"85-2-302. Application for permit or change in appropriation right.** (1) Except as provided in 85-2-306 and 85-2-369, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or related distribution works unless the person applies for and receives a permit or an authorization for a change in appropriation right from the department.

(2) The department shall adopt rules that are necessary to determine whether or not an application is correct and complete, based on the provisions applicable to issuance of a permit under this part or a change in appropriation right pursuant to Title 85, chapter 2, part 4. The rules must be adopted in compliance with Title 2, chapter 4.

(3) The application must be made on a form prescribed by the department. The department shall make the forms available through its offices.

(4) (a) Subject to subsection (4)(b), the applicant shall submit a correct and complete application. The determination of whether an application is correct and complete must be based on rules adopted under subsection (2) that are in effect at the time the application is submitted.

(b) If an application is for a permit to appropriate water with a point of diversion, conveyance, or place of use on national forest system lands, the application is not correct and complete under this section until the applicant has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.

(5) The department shall notify the applicant of any defects in an application within 180 days. The defects must be identified by reference to the rules adopted under subsection (2). If the department does not notify the applicant of any defects within 180 days, the application must be treated as a correct and complete application.

(6) An application does not lose priority of filing because of defects if the application is corrected or completed within 30 days of the date of notification of the defects or within a further time as the department may allow, but not to exceed 90 days from the date of notification. If an application is made correct and complete after the mandated time period, but within 90 days of the date of notification of the defects, the priority date of the application is the date the application is made correct and complete.

(7) An application not corrected or completed within 90 days from the date of notification of the defects is terminated.

(8) Pursuant to [section 2], the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation."

**Section 8.** Section 85-2-306, MCA, is amended to read:

**"85-2-306. Exceptions to permit requirements.** (1) (a) Except as provided in subsection (1)(b), ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works.

(b) If another person has rights in the ground water development works, water may be appropriated with the written consent of the person with those property rights or, if the ground water development works are on national forest system lands, with any prior written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the certificate.

(c) If the person does not have a possessory interest in the real property from which the ground water may be appropriated, the person shall provide to the owner of the real property written notification of the works and the person's intent to appropriate ground water from the works. The written notification must be provided to the landowner at least 30 days prior to constructing any associated works or, if no new or expanded works are proposed, 30 days prior to appropriating the water. The written notification under this subsection is a notice requirement only and does not create an easement in or over the real property where the ground water development works are located.

(2) Inside the boundaries of a controlled ground water area, ground water may be appropriated only:

(a) according to a permit received pursuant to 85-2-508; or

(b) according to the requirements of a rule promulgated pursuant to 85-2-506.

(3) (a) Outside the boundaries of a controlled ground water area, a permit is not required before

appropriating ground water by means of a well or developed spring:

(i) when the appropriation is made by a local governmental fire agency organized under Title 7, chapter 33, and the appropriation is used only for emergency fire protection, which may include enclosed storage;

(ii) when a maximum appropriation of 350 gallons a minute or less is used in nonconsumptive geothermal heating or cooling exchange applications, all of the water extracted is returned without delay to the same source aquifer, and the distance between the extraction well and both the nearest existing well and the hydraulically connected surface waters is more than twice the distance between the extraction well and the injection well;

(iii) when the appropriation is outside a stream depletion zone, is 35 gallons a minute or less, and does not exceed 10 acre-feet a year, except that a combined appropriation from the same source by two or more wells or developed springs exceeding 10 acre-feet, regardless of the flow rate, requires a permit; or

(iv) when the appropriation is within a stream depletion zone, is 20 gallons a minute or less, and does not exceed 2 acre-feet a year, except that a combined appropriation from the same source by two or more wells or developed springs exceeding this limitation requires a permit.

(b) (i) Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department through its offices.

(ii) Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iii) If a notice is not corrected and completed within the time allowed, the priority date of appropriation is the date of refiling a correct and complete notice with the department.

(c) A certificate of water right may not be issued until a correct and complete notice has been filed with the department, including proof of landowner notification or a written federal special use authorization as necessary under subsection (1). The original of the certificate must be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(4) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force

prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (3), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing of a notice, as provided in subsection (3), or the date of the filing of the claim of existing water right.

(5) An appropriation under subsection (4) is an existing right, and a permit is not required. However, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(6) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if:

(a) the maximum capacity of the impoundment or pit is less than 15 acre-feet;

(b) the appropriation is less than 30 acre-feet a year;

(c) the appropriation is from a source other than a perennial flowing stream; and

(d) the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger.

(7) (a) Within 60 days after constructing an impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Subject to subsection (7)(b), upon receipt of a correct and complete application for a stock water provisional permit, the department shall automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights of other appropriators.

(b) If the impoundment or pit is on national forest system lands, an application is not correct and complete under this section until the applicant has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.

(8) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the department under 85-2-113.

(9) Pursuant to [section 2], the provisions of this section do not apply within the exterior boundaries of

the Flathead Indian reservation."

**Section 9.** Section 85-2-427, MCA, is amended to read:

**"85-2-427. (Temporary) Temporary lease of appropriation right -- requirements -- rulemaking.** (1) Applications to temporarily lease an appropriation right that comply with the requirements of this section are not subject to the provisions of 85-2-402, 85-2-407, 85-2-408, or 85-2-436. After obtaining department approval pursuant to this section, an appropriator may temporarily lease an appropriation right.

(2) The amount of water leased may not exceed the total consumptive use of the appropriation right. For an irrigation right, the consumptive volume may not exceed 1 acre-foot per acre irrigated. The department shall determine the consumptive volume limits for other uses by rule.

(3) (a) Each appropriation right leased pursuant to this section:

(i) must have been used within 5 years prior to the application date;

(ii) may be leased only during the period of diversion for the appropriation right; and

(iii) may not be leased for more than 2 years one time during any consecutive 10-year period.

(b) The volume of water leased may not exceed 180 acre-feet per year.

(c) The point of diversion for the appropriation right may not be changed.

(4) The use of any appropriation rights on the place of use associated with a leased appropriation right is forbidden during the term of the lease.

(5) Storage may not be added to the leased appropriation right at the point of diversion or the original place of use.

(6) This section does not apply to changes in an appropriation right that would result in leased water being transported outside Montana. Proposed out-of-state uses are subject to the provisions of 85-2-402.

(7) Water leased pursuant to this section must be measured at the point of diversion by a meter approved by the department. The appropriator shall report the amount of water measured at the end of the year in which the lease occurred or upon request of the department.

(8) An applicant proposing to lease an appropriation right pursuant to this section shall submit a correct and complete application on a form provided by the department and a fee as established by rule. The application must include:

(a) the name and address of each lessee;

(b) the name of all owners of each appropriation right;

(c) the number of each appropriation right;

(d) the proposed use and the place of use for the leased water;

(e) the source of water to be appropriated;

(f) the start and end dates of the proposed lease;

(g) the proposed diversion flow rate and volume of water to be used during the lease;

(h) evidence that the appropriation right has been used within the last 5 years;

(i) a description of how the existing use of the appropriation rights would cease at the place of use during the lease period, including the number and location of acres to be removed from irrigation, if applicable; and

(j) an analysis of potential adverse effects and a description of planned actions to mitigate potential adverse effects.

(9) Within 30 days of receiving the application, the department shall approve or deny the application. An approved application must be correct and complete and meet the requirements of this section. The department may approve an application with conditions.

(10) After approval, the department shall provide notice of the proposed lease that includes the information in subsections (8)(a) through (8)(g). The department shall:

(a) mail individual notice to potentially affected appropriators identified by the department in the area of the point of diversion; and

(b) post the notice on the department's website.

(11) (a) For 60 days from the date that notice is mailed pursuant to subsection (10), the department shall accept correct and complete objections to the proposed lease from any person whose property, water rights, or interests would be adversely affected by the proposed appropriation. The objection must be made on a form provided by the department.

(b) The department shall determine if an objection is valid. A valid objection contains facts indicating that the rights of other appropriators would be adversely affected by the lease of the appropriation right. If the department determines that an objection is valid, the approval for the use of the appropriation right under the lease is canceled and no water may be used pursuant to the lease.

(c) The owner of an appropriation right whose approval is canceled under subsection (11)(b) may request a hearing on the objection pursuant to 2-4-604 within 15 days of notice of the cancellation. The department shall issue an order reinstating approval for the use of the appropriation right under the lease if the applicant proves by a preponderance of the evidence that the water rights of other appropriators will not be

adversely affected by the lease.

(12) Leased water may not be put to use until a final determination is made pursuant to subsection (11). The lessee shall provide the department with a copy of the executed lease agreement before the leased water is put to use.

(13) Violations of this section are subject to the provisions of 85-2-114 and 85-2-122. This subsection does not limit the remedies available to an appropriator to enjoin or seek damages from the owner of an appropriation right who leased the water or from a lessee.

(14) The department shall adopt rules to implement this section. The rules must include definitions of consumptive uses and criteria for determining if an appropriation right has been used in the 5 years prior to the temporary lease application.

(15) The department shall report annually to the water policy interim committee provided for in 5-5-231. The report must include the number of leases, the amount of water leased, and the number of irrigated acres taken out of production.

(16) Pursuant to [section 2], the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation. (Terminates July 1, 2019--sec. 4, Ch. 236, L. 2013.)"

**Section 10.** Section 85-2-506, MCA, is amended to read:

**"85-2-506. Controlled ground water areas -- designation or modification.** (1) The department may by rule designate or modify permanent or temporary controlled ground water areas as provided in this part. The rule for each controlled ground water area must designate the boundaries of the controlled ground water area.

(2) The rulemaking process for designation or modification of a controlled ground water area may be initiated by:

(a) the department;

(b) submission of a correct and complete petition from a state or local public health agency for identified public health risks; or

(c) submission of a correct and complete petition:

(i) by a municipality, county, conservation district, or local water quality district formed under Title 7, chapter 13, part 45; or

(ii) signed by at least one-third of the water right holders in a proposed controlled ground water area.

(3) (a) A correct and complete petition must:

(i) be in a form prescribed by the department and must contain analysis prepared by a hydrogeologist, a qualified scientist, or a qualified licensed professional engineer concluding that one or more of the criteria provided in subsection (5) are met; and

(ii) describe proposed measures, if any, to mitigate effects of the criteria identified in subsection (5) that are alleged in the petition.

(b) When the department proposes a rule pursuant to this section, the place for the hearing must be within or as close as practical to the proposed or existing controlled ground water area.

(c) (i) The department shall notify the petitioner of any defects in a petition within 180 days. If the department does not notify the petitioner of any defects within 180 days, the petition must be treated as correct and complete.

(ii) A petition that is not made correct and complete within 90 days from the date of notification by the department of any defect is terminated.

(4) (a) Within 60 days after a petition is determined to be correct and complete, the department shall:

(i) deny in writing the petition in whole or in part, stating the reasons for denial;

(ii) inform the petitioner that the department will study the information presented in the petition for a period not to exceed 90 days before denying or proceeding with the petition; or

(iii) initiate rulemaking proceedings in accordance with Title 2, chapter 4, part 3.

(b) Failure of the department to act under subsection (4)(a) does not mandate that the department grant the petition for rulemaking.

(c) In addition to the notice requirements of Title 2, chapter 4, parts 1 through 4, the department shall provide public notice of the rulemaking hearing by:

(i) publishing a notice at least once each week for 3 successive weeks, with the first notice not less than 30 days before the date of the hearing in a newspaper of general circulation in the county or counties in which the proposed controlled ground water area is located;

(ii) serving by mail a copy of the notice, not less than 30 days before the hearing, upon each person or public agency known from an examination of the records of the department to be a water right holder with a diversion within the proposed controlled ground water area, all landowners of record within the proposed controlled ground water area, and each well driller licensed in Montana whose address is within any county in which any part of the proposed controlled ground water area is located; and

(iii) serving by mail a copy of the notice upon any other person or state or federal agency that the

department feels may be interested in or affected by the proposed designation or modification of a controlled ground water area.

(d) The notice under subsection (4)(c) must include a summary of the basis for the proposed rule. Publication and mailing of the notice as prescribed in this section, when completed, is considered to be sufficient notice of the hearing to all interested persons.

(5) The department may designate a permanent controlled ground water area by rule if it finds by a preponderance of the evidence that any of the following criteria have been met and cannot be appropriately mitigated:

(a) current or projected reductions of recharge to the aquifer or aquifers in the proposed controlled ground water area will cause ground water levels to decline to the extent that water right holders cannot reasonably exercise their water rights;

(b) current or projected ground water withdrawals from the aquifer or aquifers in the proposed controlled ground water area have reduced or will reduce ground water levels or surface water availability necessary for water right holders to reasonably exercise their water rights;

(c) current or projected ground water withdrawals from the aquifer or aquifers in the proposed controlled ground water area have induced or altered or will induce or alter contaminant migration exceeding relevant water quality standards;

(d) current or projected ground water withdrawals from the aquifer or aquifers in the proposed controlled ground water area have impaired or will impair ground water quality necessary for water right holders to reasonably exercise their water rights based on relevant water quality standards;

(e) ground water within the proposed controlled ground water area is not suited for beneficial use; or

(f) public health, safety, or welfare is or will become at risk.

(6) (a) If the department finds that sufficient facts are not available to designate a permanent controlled ground water area, it may designate by rule a temporary controlled ground water area to allow studies to obtain the facts needed to determine whether or not it is appropriate to designate a permanent controlled ground water area. The department shall set the length of time that the temporary controlled ground water area will be in effect. Subject to subsection (6)(c), the term of a temporary controlled ground water area may be extended by rule.

(b) A temporary controlled ground water area designation is for the purpose of study and cannot include the control provisions provided in subsection (7), other than measurement, water quality testing, and reporting requirements.

(c) A temporary controlled ground water area designation may not exceed a total of 6 years, including any extensions.

(d) Prior to expiration of a temporary controlled ground water area, the department may amend or repeal the rule establishing the temporary controlled ground water area or may designate a permanent controlled ground water area through the rulemaking process under this section.

(e) Studies for temporary controlled ground water areas may be considered for funding under the renewable resource grant and loan program in Title 85, chapter 1, part 6.

(f) If there is a ground water investigation program within the bureau, the ground water assessment steering committee established by 2-15-1523 shall consider temporary controlled ground water areas for study.

(7) A controlled ground water area may include but is not limited to the following control provisions:

(a) a provision closing the controlled ground water area to further appropriation of ground water;

(b) a provision restricting the development of future ground water appropriations in the controlled ground water area by flow, volume, purpose, aquifer, depth, water temperature, water quality, density, or other criteria that the department determines necessary;

(c) a provision requiring measurement of future ground water or surface water appropriations;

(d) a provision requiring the filing of notice on land records within the boundary of a permanent controlled ground water area to inform prospective holders of an interest in the property of the existence of a permanent controlled ground water area. Notice of the designation must be removed or modified as necessary to accurately reflect modification or repeal of a permanent designation within 60 days.

(e) a provision for well spacing requirements, well construction constraints, and prior department approval before well drilling, unless the well is regulated pursuant to Title 82, chapter 11;

(f) a provision for mitigation of ground water withdrawals;

(g) a provision for water quality testing;

(h) a provision for data reporting to the department; and

(i) other control provisions that the department determines are appropriate and adopts through rulemaking.

(8) Pursuant to [section 2], the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation."

**Section 11.** Section 85-5-110, MCA, is amended to read:

**"85-5-110. Appointment of water mediators -- duties.** (1) ~~The~~ Except as provided in [section 2], the judge of the district court may appoint a water mediator to mediate a water controversy in a decreed or nondecreed basin under the following circumstances:

(a) upon request of the governor;

(b) upon petition by at least 15% of the owners of water rights in a decreed or nondecreed basin; or

(c) in the discretion of the district court having jurisdiction.

(2) A water mediator appointed under this section may:

(a) discuss proposed solutions to a water controversy with affected water right holders;

(b) review options related to scheduling and coordinating water use with affected water right holders;

(c) discuss water use and water needs with persons and entities affected by the existing water use;

(d) meet with principal parties to mediate differences over the use of water; and

(e) hold public meetings and conferences to discuss and negotiate potential solutions to controversies over use of water.

(3) If the governor requests or a state agency petitions for a water mediator, the governor or agency shall pay all or a majority of the costs of the water mediator as determined equitable by the district court having jurisdiction.

(4) The governor may use funds appropriated under 75-1-1101 to pay the costs of a water mediator.

(5) This section does not allow a water mediator to require any valid water right holder to compromise or reduce any of the holder's existing water rights.

(6) If an appropriator voluntarily ceases to use all or part of an appropriation right or voluntarily ceases to use an appropriation right according to its terms and conditions as a result of the efforts of a mediator appointed under this section, the appropriator may not be considered to have abandoned all or any portion of the appropriation right."

NEW SECTION. **Section 12. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

NEW SECTION. **Section 13. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 85, chapter 20, and the provisions of Title 85, chapter 20, apply to [sections 1 and 2].

NEW SECTION. **Section 14. Effective date.** [This act] is effective on passage and approval.

- END -

SENATE BILL NO. 262

INTRODUCED BY C. VINCENT, P. CONNELL, S. FITZPATRICK, B. HAMLETT, S. STEWART-PEREGOY, K. WILLIAMS

A BILL FOR AN ACT ENTITLED: "AN ACT RATIFYING A WATER RIGHTS COMPACT ENTERED INTO BY THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION, THE STATE OF MONTANA, AND THE UNITED STATES OF AMERICA; CREATING A UNITARY ADMINISTRATION AND MANAGEMENT ORDINANCE TO GOVERN WATER RIGHTS ON THE FLATHEAD RESERVATION; PROVIDING EXCEPTIONS FROM CERTAIN STATE WATER LAWS RELATED TO DEPARTMENT POWERS, JUDICIAL ENFORCEMENT, AND WATER RIGHTS PERMITTING; AMENDING SECTIONS 3-7-211, 85-2-111, 85-2-114, 85-2-301, 85-2-302, 85-2-306, 85-2-427, 85-2-506, AND 85-5-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Water rights compact entered into by the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, the State of Montana, and the United States ratified.** This Compact is entered into by and among the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, the State of Montana, and the United State of America to settle all existing claims to water of or on behalf of the Confederated Salish and Kootenai Tribes within the State of Montana.

ARTICLE I - RECITALS

WHEREAS, pursuant to the Hellgate Treaty of 1855, 12 Stat. 975, the Confederated Salish and Kootenai Tribes reserved the Flathead Indian Reservation; and

WHEREAS, the Confederated Salish and Kootenai Tribes claim aboriginal water rights and, pursuant to said Treaty, reserved water rights to fulfill the purposes of the Treaty and the Reservation; and

WHEREAS, in 1979, the United States, on its own behalf and on behalf of the Confederated Salish and Kootenai Tribes, their members and Allottees brought suit in the United States District Court for the District of Montana to obtain a final determination of the Tribes' water rights claims, see United States v. Abell, No. CIV-79-33-M (filed April 5, 1979); and

WHEREAS, as a result of Congressional action and subsequent judicial interpretation, state courts have

been found to possess, under certain circumstances, adjudicatory jurisdiction over federal reserved water rights held in trust by the United States for the benefit of Indians; see, McCarran Amendment 43 U.S.C. 666; Colorado River Conservation District v. United States, 424 U.S. 800 (1976); Arizona v. San Carlos Apache Tribe, 463 U.S. 545 (1983); and

WHEREAS, the State of Montana initiated a general stream adjudication pursuant to the provisions of Chapter 697, Laws of Montana 1979, which includes claims regarding the Confederated Salish and Kootenai Tribes' water rights; and

WHEREAS, the Montana Reserved Water Rights Compact Commission, under 85-2-702(1), MCA, is authorized to negotiate settlement of water rights claims filed by Indian tribes or filed on their behalf by the United States claiming reserved waters within the State of Montana; and

WHEREAS, the Federal district court litigation was stayed in 1983 pending the outcome of Montana State court water adjudication proceedings, see Northern Cheyenne v. Adsit, 721 F.2d 1187 (9th Cir.1983); and

WHEREAS, the adjudication of Confederated Salish and Kootenai Tribes' water rights in the State court proceeding has been stayed while negotiations are proceeding to conclude a compact resolving all water rights claims of the Confederated Salish and Kootenai Tribes; and

WHEREAS, the Confederated Salish and Kootenai Tribes, or their duly designated representatives, have authority to negotiate the Compact and the Tribal Council has the authority to execute this Compact pursuant to Article 6, Section 1, subsections (a), (c), and (u) of the Constitution and Bylaws of the Confederated Salish and Kootenai Tribes said Constitution adopted and approved under Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended; and

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. 516-17 and the Federal legislation ratifying this Compact identified in Article VIII.B; and

WHEREAS, the Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this Compact on behalf of the United States Department of the Interior pursuant to 43 U.S.C. 1457, inter alia, and appropriate Federal legislation ratifying this Compact as identified in Article VIII.B; and

WHEREAS, the Confederated Salish and Kootenai Tribes, the State of Montana, and the United States agree that the Tribal Water Right and other water rights described in this Compact, subject to the provisions of

the Act of Congress identified in Article VIII.B, is in satisfaction of the water rights claims of the Tribes, their members and Allottees, and of the United States on behalf of the Tribes and their members and Allottees; and

WHEREAS, the Parties agree that it is in the best interest of all Parties that the water rights claims of the Confederated Salish and Kootenai Tribes be settled through agreement between and among the Tribes, the State of Montana, and the United States; and

WHEREAS, the Parties agree that there is a clear hydrological interrelationship between the surface water and Groundwater of the Reservation, and each use of water on the Reservation may affect water use by all water users on the Reservation; and

WHEREAS, the Parties agree that prudent and knowledgeable conservation, management, and protection of the water resources of the Reservation are essential to the health and welfare of all residents of the Reservation; and

WHEREAS, the Parties seek to secure to all residents of the Reservation the quiet enjoyment of the use of waters of the Reservation for beneficial uses; and

WHEREAS, the Parties agree to protect Tribal Instream Flows, Existing Uses, and Historic Farm Deliveries to Flathead Indian Irrigation Project irrigators; and

WHEREAS, the Parties desire to create a unitary administration system that would provide a single system for the appropriation and administration of the waters of the Reservation and for the establishment and maintenance of a single system of centralized records for all water uses of the Reservation regardless of whether the use is based on State or Federal law.

NOW THEREFORE, the Parties agree to enter into the Compact for the purpose of settling the water rights claims of the Confederated Salish and Kootenai Tribes, their members, and Allottees of the Flathead Indian Reservation, and of the United States on behalf of the Tribes, their members and Allottees, and to provide the necessary foundation for the establishment of a board composed of Tribal and State appointed representatives to provide for the unified administration of all water resources on the Reservation.

## ARTICLE II - DEFINITIONS

The following definitions shall apply for purposes of the Compact:

1. "Acre-foot" or "Acre-feet" means the amount of water necessary to cover one acre to a depth of one foot and is equivalent to 43,560 cubic feet of water.

2. "Adaptive Management" means an ongoing process of decision-making, based on water measurement and accounting designed to continuously manage and improve the allocation of water between Instream Flows,

Minimum Reservoir Pool Elevations, and FIIP Water Use Rights pursuant to the Adaptive Management Appendix 3.5.

3. "Allottee" or "Allottees" means an owner of an interest in a tract of land held in trust by the United States which was allotted pursuant to the Act of April 23, 1904, 33 Stat. 302, as amended, or the Act of February 25, 1920, 41 Stat. 452, as amended.

4. "Alternate Value" means, as applied to the consensual agreements provided for by Article III.G.3, the quantity of water allowed under a claim decreed by the Montana Water Court or water right granted by the DNRC.

5. "Appropriation Right" means a right to appropriate water issued by the Water Management Board pursuant to the terms of this Compact and the Law of Administration.

6. "Arising Under State Law" means, as applied to a water right, a water right created under Montana law or a water right held by a nonmember of the Tribes on land not held in trust by the United States for the Tribes or a Tribal member and for which a claim was required to be filed in the Montana general stream adjudication.

7. "Basin 76D" means the hydrologic Basin 76D, including the Kootenai River and its tributaries, as shown in Appendix 1.

8. "Basin 76E" means the hydrologic Basin 76E, including Rock Creek and its tributaries, as shown in Appendix 1.

9. "Basin 76F" means the hydrologic Basin 76F, including the Blackfoot River and its tributaries, as shown in Appendix 1.

10. "Basin 76G" means the hydrologic Basin 76G, including the Clark Fork River above the Blackfoot River, and its tributaries, as shown in Appendix 1.

11. "Basin 76GJ" means the hydrologic Basin 76GJ, including Flint Creek and its tributaries, as shown in Appendix 1.

12. "Basin 76H" means the hydrologic Basin 76H, including the Bitterroot River and its tributaries, as shown in Appendix 1.

13. "Basin 76I" means the hydrologic Basin 76I, including the Middle Fork of the Flathead River and its tributaries, as shown in Appendix 1.

14. "Basin 76J" means the hydrologic Basin 76J, including the South Fork of the Flathead River and its tributaries, as shown in Appendix 1.

15. "Basin 76K" means the hydrologic Basin 76K, including the Swan River and its tributaries, as shown in Appendix 1.

16. "Basin 76L" means the hydrologic Basin 76L, including the Flathead River below Flathead Lake, and its tributaries, as shown in Appendix 1.

17. "Basin 76LJ" means the hydrologic Basin 76LJ, including the Flathead River to and including Flathead Lake, and its tributaries, as shown in Appendix 1.

18. "Basin 76M" means the hydrologic Basin 76M, including the Clark Fork River between the Blackfoot River and the Flathead River, and its tributaries, as shown in Appendix 1.

19. "Basin 76N" means the hydrologic Basin 76N, including the Clark Fork River below the Flathead River, and its tributaries, as shown in Appendix 1.

20. "Call" means the right of the holder of a water right with a senior priority date and an immediate need for a use of water to require a holder of a water right with a junior priority date to refrain from appropriating water otherwise physically available until the senior water right is satisfied.

21. "Cfs" means cubic feet per second.

22. "Change in Use" means an authorized change in the point of diversion, the place of use, the period of use, the purpose of use, or the place of storage of an Appropriation Right issued by the Water Management Board under this Compact and the Law of Administration, or of an Existing Use. A changed water right retains the original priority date of that right.

23. "Compact" means this water rights settlement entered into by the Confederated Salish and Kootenai Tribes, the State and the United States.

24. "Compact Implementation Technical Team" or "CITT" means the entity established by this Compact to plan and advise the Project Operator on the implementation of FIIP Operational Improvements, Rehabilitation and Betterment, and Adaptive Management. The CITT duties and responsibilities are defined in more detail in Appendix 3.5.

25. "Compact Management Committee" or "CMC" means the entity described in Article IV.G.5 formed to provide policy and administrative oversight of the CITT.

26. "Court of Competent Jurisdiction" means a State or Tribal court that otherwise has jurisdiction over the matter so long as the parties to the dispute to be submitted to that court consent to its exercise of jurisdiction, but if no such court exists, a Federal court.

27. "DNRC" means the Montana Department of Natural Resources and Conservation, or any successor agency.

28. "Effective Date" means the date on which the Compact is finally approved by the Tribes, by the State,

and by the United States, and on which the Law of Administration has been enacted and taken effect as the law of the State and the Tribes, whichever date is latest.

29. "Existing Use" means a use of water under color of Tribal, State or Federal law in existence as of the Effective Date, including uses in existence on that date that are eligible for either of the registration processes set forth in the Law of Administration; provided that any portion of a Water Right Arising Under State Law within the Reservation that is, at any point after the date the ratification of the Compact by the Montana Legislature takes effect under State law, voluntarily relinquished or is legally determined to be abandoned, relinquished, or have otherwise ceased to exist, shall be stricken from the relevant basin decree as a Water Right Arising Under State Law and be entitled to no further protection as such a right or as an Existing Use.

30. "Flathead Indian Irrigation Project" or "FIIP" means the irrigation project developed by the United States to irrigate lands within the Reservation pursuant to the Act of April 23, 1904, Public Law 58-159, 33 Stat. 302 (1904), and the Act of May 29, 1908, Public Law 60-156, 35 Stat. 441 (1908), and includes, but is not limited to, all lands, reservoirs, easements, rights-of-way, canals, ditches, laterals, or any other FIIP facilities (whether situated on or off the Reservation), headgates, pipelines, pumps, buildings, heavy equipment, vehicles, supplies, records or copies of records and all other physical, tangible objects, whether of real or personal property, used in the management and operation of the FIIP.

31. "FIIP Influence Area" means the lands influenced by the operations of the FIIP as identified on the map attached hereto as Appendix 2.

32. "FIIP Water Use Right" means the water right set forth in Article III.C.1.a that is dedicated to use by the FIIP and FIIP irrigators and includes uses of water for irrigation and Incidental Purposes allowed by the FIIP through water service contracts. This water right is the source for the entitlement to delivery of available irrigation water for assessed parcels as provided by Article IV.D.2.

33. "Flathead Indian Reservation" or "Reservation" means all land within the exterior boundaries of the Indian Reservation established under the July 16, 1855 Treaty of Hellgate (12 Stat. 975), notwithstanding the issuance of any patent, and including rights-of-way running through the Reservation.

34. "Flathead Reservation Water Management Board," "Water Management Board," or "Board" means the entity established by this Compact and the Law of Administration to administer the use of all water rights on the Reservation upon the Effective Date.

35. "Flathead System Compact Water" means that portion of the Tribal Water Right consisting of 229,383 Acre-feet per year that the Tribes may withdraw from the Flathead River or Flathead Lake, which includes up to

90,000 Acre-feet per year stored in Hungry Horse Reservoir, with a maximum total volume consumed of 128,158 Acre-feet per year.

36. "Historic Farm Deliveries" means the aggregate annual volume of water for irrigation and Incidental Purposes on the FIIP that was delivered to all farm turnouts within an individual River Diversion Allowance Area prior to the date the ratification of the Compact by the Montana Legislature takes effect under State law. Historic Farm Deliveries include historic crop consumption and estimated standard rates of on-farm conveyance and irrigation application inefficiencies and are used to evaluate RDA values pursuant to Article IV.D.1.e. Historic Farm Delivery volumes are specified in Appendix 3.3.

37. "Groundwater" means any water that is beneath the surface of the earth.

38. "High Mountain Lakes" means those lakes shown in Appendix 17.

39. "Hungry Horse Dam" means the dam that is a part of the Hungry Horse Project.

40. "Hungry Horse Project" means that project authorized by the Act of June 5, 1944 (58 Stat. 270, Public Law 78-329) to be constructed and operated by the US Bureau of Reclamation. The Act of May 29, 1958 (Public Law 85-428) amended the authorizing act to make Hungry Horse a Reclamation project subject to Reclamation laws.

41. "Hungry Horse Reservoir" means the reservoir that is a part of the Hungry Horse Project.

42. "Incidental Purpose(s)" means water delivered through or diverted from FIIP facilities for purposes incidental to irrigation, including but not limited to Rehabilitation and Betterment, and lawn and garden purposes allowed by the FIIP through water service contracts.

43. "Individual Indian Owner" means a Tribal member and his or her heirs or an Allottee and his or her heirs who is an owner of an interest in trust or restricted lands and who has a documented use of the Tribal Water Right registered pursuant to the terms of this Compact and the Law of Administration.

44. "Instream Flow" means a stream flow retained in a watercourse to benefit the aquatic environment. Instream Flow may include Natural Flow or streamflow affected by regulation, diversion, or other modification. A water right for Instream Flow purposes is quantified for a stream reach and measured for enforcement purposes at a specified point.

45. "Law of Administration" or "Unitary Administration and Management Ordinance" means the body of laws enacted by both the State and the Tribes to provide for the administration of surface water and Groundwater within the Reservation, that are both materially consistent with the substantive provisions of Appendix 4.

46. "Lease" means, as applied to the Tribal Water Right, an authorization for a Person or Persons to use

any part of the Tribal Water Right through a service contract, temporary assignment, or other similar agreement of limited duration.

47. "MFWP" means the Montana Department of Fish, Wildlife, and Parks, or any successor agency.

48. "Minimum Enforceable Instream Flows" or "MEFs" means the schedule of monthly minimum enforceable streamflow levels that are set forth in Appendix 3.1.

49. "Minimum Reservoir Pool Elevations" means the minimum pool water elevations for FIIP reservoirs specified in the table attached hereto as Appendix 3.1 and abstracts of water right attached hereto as Appendix 15.

50. "Natural Flow" means the rate and volume of water movement past a specified point on a natural stream, produced from a drainage area for which there have been no effects caused by diversion, storage, import, export, return flow, or changes in consumptive use.

51. "New Development" means the development of a use of the Tribal Water Right set forth in the Compact, from any source, commencing after the Effective Date, and encompasses all uses of the Tribal Water Right not included within the definition of Existing Use.

52. "Operational Improvements" means practices that improve the ability of the Project Operator to plan for and manage water storage and allocation between Instream Flows and FIIP Water Use Rights. Operational Improvements address water supply planning, reservoir management, Instream Flow management, water accounting and reporting, Stock Water delivery, irrigation wastewater, measurement at diversion works, water measurement at farm delivery locations, and water measurement at irrigation wasteways. Operational Improvements are set forth in the schedule attached hereto as Appendix 3.4.

53. "Parties" means the Tribes, the State, and the United States.

54. "Person" means an individual or any other entity, public or private, including the Tribes, the State, and the United States, and all officers, agents and departments of each sovereign.

55. "Project Operator" means the entity with the legal authority and responsibility to operate the Flathead Indian Irrigation Project.

56. "Reallocated Water" means the water from that portion of any given FIIP diversion or RDA that is made available through increased efficiency resulting from Rehabilitation and Betterment projects.

57. "Rehabilitation and Betterment" means both irrigation facility upgrades that improve water management and operational control at irrigation diversion works, and irrigation facility upgrades to reduce losses in conveyance of water from irrigation sources of supply to irrigation points of use. Rehabilitation and Betterment

actions include, but are not limited to, reconstruction, replacement, and automation at irrigation diversion works; lining of open canals; and placement of open canals in pipe.

58. "River Diversion Allowance" or "RDA" means initially the volume of water identified in Appendix 3.2 and defined for wet, normal and dry Natural Flow years that is necessary to be diverted or pumped to supply the FIIP Water Use Right. As Reallocated Water is made available through Rehabilitation and Betterment, the RDA is the amount defined in Appendix 3.2, reduced by the volume of Reallocated Water made available by a particular Rehabilitation and Betterment project.

59. "River Diversion Allowance Area" or "RDA Area" means geographic divisions of the FIIP to which water is diverted. RDA Areas are depicted in Appendix 3.2.

60. "Secretary" means the Secretary of the United States Department of the Interior, or the Secretary's duly authorized representative.

61. "Shared Shortages" means a water management procedure to be applied when water supply is insufficient to satisfy both MEFs and RDAs simultaneously.

62. "State" means the State of Montana and all officers, agencies, departments and political subdivisions thereof.

63. "Stock Water" means water used for livestock.

64. "Target Instream Flows" or "TIFs" means the schedule of monthly Instream Flow levels, defined for normal and wet Natural Flow years that are identified in Appendix 3.1.

65. "Tribal Council" means the duly elected governing body of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana.

66. "Tribal Natural Resources Department" means the governmental subdivision of the Tribes authorized by Tribal Ordinance No. 78-B, as amended, or any successor agency.

67. "Tribal Water Right" means the water rights of the Confederated Salish and Kootenai Tribes, including any Tribal member or Allottee, the basis of which are federal law, as set forth in Article III.A, Article III.C.1.a through j, Article III.C.1.k.i, Article III.C.1.l.i, Article III.D.1 through 3 and Article III.D.7 and 8. The term "Tribal Water Right" also includes those rights identified in Article III.H that are appurtenant to lands taken into trust by the United States on behalf of the Tribes.

68. "Tribes" means the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, and all officers, agencies, and departments thereof.

69. "United States" means the Federal government and all officers, agencies and departments thereof.

70. "Water Rights Arising Under State Law" means those valid water rights Arising Under State Law existing as of the Effective Date and not subsequently relinquished or abandoned, as those rights are: decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permitted by the DNRC; exempted from filing in the Montana general stream adjudication pursuant to 85-2-222, MCA; or excepted from the permitting process pursuant to 85-2-306, MCA.

71. "Wetland" means an area that is inundated or saturated by surface water or Groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

ARTICLE III -WATER RIGHTS OF THE TRIBES

The water rights of the Tribes quantified in Article III are composed of two parts: water rights whose basis is Federal law that are defined and referred to as the Tribal Water Right and those Water Rights Arising Under State Law identified in Article III.C.1.k.ii, III.C.1.l.ii, III.D.4, 5, and 6, and III.H.

A. Religious or Cultural Uses. The Tribal Water Right described in this Article III includes all traditional, religious, or cultural uses of water by members of the Confederated Salish and Kootenai Tribes within Montana. Individual exercises of traditional, religious, or cultural uses are exempt from the Registration process contained in the Law of Administration.

B. Abstracts of Water Right. Abstracts of water right appended to this Compact are a substantive element of this Compact. The language of the abstracts, including all informational remarks, shall control in the event of any inconsistency between the Compact and the abstracts of water right; provided however, that the Parties upon written mutual agreement may make technical corrections to the abstracts prior to the Parties submission to the Montana Water Court of the motion for entry of the Proposed Decree identified in Article VII.B. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

C. Basins 76L and 76 LJ and Flathead Indian Irrigation Project Irrigation Water Diversions from Basins 76F and 76N.

1. Quantification.

a. Flathead Indian Irrigation Project. The Tribes have the right to water that is supplied to the Flathead Indian Irrigation Project to be used for such purposes in such volumes and flow rates and from such sources of supply as identified in the abstracts of water right attached hereto as Appendix 5. The FIIP will serve up to, but not more than 135,000 acres. The exercise of this portion of the Tribal Water Right shall be satisfied by meeting

the RDA values for each RDA Area described in Appendix 3.2 as evaluated pursuant to Article IV.D.1.e, and is subject to Article IV.D through F.

The priority date for the portion of the Tribal Water Right used by the FIIP is July 16, 1855.

b. Existing Uses by the Tribes, their Members and Allottees.

i. The Tribal Water Right includes all Existing Uses by the Tribes, their members and Allottees that are not Water Rights Arising Under State Law and are not otherwise specifically quantified in other sections of this Article III.

ii. Water Rights Arising Under State Law held by the Tribes, their members and Allottees will be satisfied pursuant to their own terms as finally decreed by the Montana Water Court or permitted by the DNRC.

iii. For each Existing Use identified in Article III.C.1.b.i to be valid and enforceable, the Tribes, or each Tribal member or Allottee claiming such an Existing Use, shall complete the process for the registration of uses of the Tribal Water Right set forth in the Law of Administration. Such uses include but are not limited to irrigation, Stock Water, domestic, commercial, municipal and industrial purposes, as well as those historically irrigated allotments that are held for individuals in trust by the United States that are not served by the FIIP and that are identified on the map and table attached hereto as Appendix 6.

iv. Uses of the Tribal Water Right for which abstracts are appended to this Compact, including uses on the FIIP, are exempt from the registration requirement set forth in Article III.C.1.b.iii.

v. The priority date for water uses registered pursuant to Article III.C.1.b.iii and the Law of Administration is July 16, 1855.

c. Flathead System Compact Water. The Tribes have a direct flow water right from the Flathead River with the following elements:

Source of Water: Flathead River, Flathead Lake, and the South Fork of the Flathead River up to Hungry Horse Reservoir

Point of Diversion: From Flathead Lake or the Flathead River, either on or off of the Reservation

Purpose: Any beneficial use

Diversion Volume: 229,383 Acre-feet per year

Depletion Volume: 128,158 Acre-feet per year

Period of Diversion and Depletion: January 1 through December 31

i. As part of the Tribal Water Right quantified in this Article III.C.1.c, the Tribes shall be entitled to an allocation of 90,000 Acre-feet per year, as measured at the Hungry Horse Dam, of storage water in Hungry Horse

Reservoir.

ii. This water right shall be used in a manner that ensures impacts associated with the exercise of this water right are no greater than those identified in model run: Natural Q + 90K of the United States Bureau of Reclamation's Final Flathead Basin Depletions Study (USBR, October 2012), attached hereto as Appendix 7. In the event that the impacts exceed those identified in model run: Natural Q + 90K of the United States Bureau of Reclamation's Final Flathead Basin Depletions Study, the use of the water right set forth in this Article III.C.1.c shall be reduced in such amounts as are necessary to immediately achieve impacts that are no greater than those identified in model run: Natural Q + 90K of the United States Bureau of Reclamation's Final Flathead Basin Depletions Study.

iii. The releases of the stored water identified in Article III.C.1.c.i shall be limited in accordance with the "Biological Impact Evaluation and Operational Constraints for a proposed 90,000 Acre-foot withdrawal" (State of Montana, September 14, 2011) attached hereto as Appendix 8. The Parties upon mutual written agreement, and in conformance with other applicable provisions of law including but not limited to the Endangered Species Act of 1973, 16 U.S.C. 1531, et seq. (ESA), may amend the Biological Impact Evaluation Constraints identified in the September 14, 2011 report. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

iv. The exercise of this water right shall conform with the minimum instream flow schedules, as measured at the USGS gaging station on the Flathead River at Columbia Falls (12363000) and the USGS gaging station on the Flathead River at Polson (12372000) as identified in Tables 3 through 6 of Appendix 7, as well as the minimum flow requirements set forth in Table 5 that must also be met downstream at the USGS gaging station on the Flathead River at Perma (123887000). The exercise of this water right shall also conform to the ramping rates, as measured below Kerr and Hungry Horse Dams, and identified in Tables 3 through 6 of Appendix 7. In the event that the minimum instream flow schedules or ramping rates are not met, the use of the water right set forth in this Article III.C.1.c shall be suspended until such time as those minimum instream flow schedules and ramping rates are achieved. The Parties upon mutual written agreement, and in conformance with applicable ESA and Federal Energy Regulatory Commission licensing requirements for the three previously identified sites, may amend the limitations for releases from Hungry Horse Reservoir that are required to conform with minimum instream flow and ramping rate schedules at these sites. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

v. The exercise of this water right shall also conform with the Flathead Lake filling criteria identified on

page 12 of Appendix 7.

vi. The Tribes may use any amount of the stored water identified in Article III.C.1.c.i that is not necessary to be released each year pursuant to the provisions of Article III.C.1.c.ii through v, for any beneficial purpose, subject to the terms and conditions of this Compact.

vii. Use of the 90,000 Acre-feet of water from Hungry Horse Reservoir is subject to the approval of, and any terms and conditions specified by, Congress.

viii. The priority date for Flathead System Compact Water is July 16, 1855.

ix. Any development by the Tribes of this Flathead System Compact Water Right outside the boundaries of the Reservation shall be pursuant to Article IV.B.5.c.

x. The Parties agree that nothing in this Compact precludes the Tribes from leasing Flathead System Compact Water to FIIP irrigators.

xi. The abstract of water right for this Flathead System Compact Water Right is attached hereto as Appendix 9.

d. Instream Flow Rights on Reservation.

i. Natural Instream Flows. The Tribes have Instream Flow rights in the quantities and locations identified in the abstracts of water right attached hereto as Appendix 10.

ii. FIIP Instream Flows. The Tribes have Instream Flow rights in the quantities and locations identified in the abstracts of water right attached hereto as Appendix 11. The exercise of this portion of the Tribal Water Right is subject to Article IV.C through F.

iii. Other Instream Flows. The Tribes have Instream Flow rights in the quantities and locations identified in the abstracts of water right attached hereto as Appendix 12. The Parties agree that a right identified in Appendix 12 shall only become enforceable on the date that an enforceable flow schedule for that right has been established pursuant to the process set forth in the Law of Administration, Section 2-1-115 of this Ordinance, for the development of such enforceable schedules.

iv. Interim Instream Flows. Until such time as the Instream Flow water rights set forth in Article III.C.1.d.ii become enforceable pursuant to Article IV.C, the Tribes shall be entitled to enforce the interim Instream Flows contained in Appendix 13 consistent with the provisions in Article IV.C and IV.E. The Tribes and the United States shall enforce these interim Instream Flows pursuant to Appendix 13 or existing practice as of December 31, 2014, and as described in the protocols in Appendix 14.

v. The priority date for the Instream Flow water rights set forth in this Article III.C.1.d is time immemorial.

e. Minimum Reservoir Pool Elevations in Flathead Indian Irrigation Project Reservoirs.

i. The Tribes have the right to water necessary to maintain Minimum Reservoir Pool Elevations for FIIP reservoirs in the quantities and locations set forth in the table and abstracts of water right attached hereto as Appendix 15. The exercise of this portion of the Tribal Water Right is subject to Article IV.C and E and superseding Federal law allowing for regulation of reservoir elevations.

ii. The Minimum Reservoir Pool Elevations will become enforceable according to the schedule attached hereto as Appendix 3.4.

iii. The priority date for the water rights set forth in this Article III.C.1.e is July 16, 1855.

iv. Until such time as the Minimum Reservoir Pool Elevations set forth in Article III.C.1.e become enforceable pursuant to Article IV.C, the Tribes shall be entitled to enforce those interim reservoir pool elevations identified in Appendix 13. The Tribes and the United States shall enforce these interim reservoir pool elevations only pursuant to Appendix 13 or existing practice as of December 31, 2014, and subject to superseding Federal law allowing for regulation of reservoir elevations.

f. Wetland Water Right. The Tribes have the right to all naturally occurring water necessary to maintain the Wetlands identified in the abstracts of water right attached hereto as Appendix 16. The priority date for the Wetland water rights set forth in this Article III.C.1.f is time immemorial.

g. High Mountain Lakes Water Right. The Tribes have the right to all naturally occurring water necessary to maintain the High Mountain Lakes identified in the abstracts of water right attached hereto as Appendix 17. The priority date for the High Mountain Lakes water rights set forth in this Article III.C.1.g is time immemorial.

h. Flathead Lake. The Tribes have the right to all naturally occurring water necessary to maintain the level of the entirety of Flathead Lake at an elevation of 2,883 feet as described in the abstract of water right attached hereto as Appendix 18. The priority date for the Flathead Lake water right set forth in this Article III.C.1.h is time immemorial.

i. Boulder Creek Hydroelectric Project. The Tribes have the right to water necessary to operate the Boulder Creek Hydroelectric Project as identified in the abstracts of water right attached hereto as Appendix 19. The priority date for the Boulder Creek Hydroelectric Project water right set forth in this Article III.C.1.i is July 16, 1855.

j. Hellroaring Hydroelectric Project. The Tribes have the right to water necessary to operate the Hellroaring Hydroelectric Project as identified in the abstracts of water right attached hereto as Appendix 20. The priority date for the Hellroaring Hydroelectric Project water right set forth in this Article III.C.1.j is July 16, 1855.

k. Wetlands Appurtenant to Lands Owned by Montana Fish Wildlife and Parks.

i. The Tribes and Montana Fish Wildlife and Parks (MFWP) have the right to all naturally occurring water necessary to maintain the Wetlands identified in the abstracts of water right attached hereto as Appendix 21. The priority date for Wetland water rights appurtenant to lands owned by MFWP is time immemorial.

ii. Upon the Effective Date, the Tribes shall be added as a co-owner with MFWP of water right number 76L 153988-00, the abstract of which is attached hereto as Appendix 22. MFWP shall make reasonable efforts to defend this right in the Montana general stream adjudication. The Tribes have the right but not the duty to participate in the defense of this right in the Montana general stream adjudication.

iii. The Tribes shall be added in an expeditious manner as a co-owner to any water right with a fish or fish and wildlife purpose that is appurtenant to land acquired by MFWP on the Reservation after the Effective Date.

iv. The Tribes shall be added in an expeditious manner as a co-owner to any Wetlands water right acquired by MFWP pursuant to the Law of Administration after the Effective Date.

v. MFWP shall be the sole entity entitled to manage the water rights identified in Article III.C.1.k. The recognition of these co-owned water rights does not confer on the Tribes any authority over the management of the MFWP-owned lands to which these water rights are appurtenant.

vi. MFWP shall meet and confer with the Tribes on a biennial basis, or on such other timeframe as the Tribes and MFWP may mutually agree, to discuss the exercise of these water rights. Such modifications to the meeting schedule are pursuant to, and shall not be deemed an amendment of, this Compact.

l. Wetlands Appurtenant to Lands Owned by Department of Interior Fish and Wildlife Service.

i. The Tribes and the Department of the Interior's Fish and Wildlife Service (FWS) have the right to all naturally occurring water necessary to maintain the Wetlands identified in the abstracts of water right attached hereto as Appendix 23. The priority date for Wetland water rights appurtenant to lands owned by FWS is time immemorial.

ii. Upon the Effective Date, the Tribes shall be added as a co-owner with FWS of water right numbers 76L 99338 00, 76L 99339 00, and 76L 99340 00, the abstracts of which are attached hereto as Appendix 24. FWS shall make reasonable efforts to defend these rights in the Montana general stream adjudication. The Tribes have the right but not the duty to participate in the defense of these rights in the Montana general stream adjudication.

iii. The Tribes shall be added in an expeditious manner as a co-owner to any water right with a fish or fish and wildlife purpose that is appurtenant to land acquired by FWS on the Reservation after the Effective Date.

iv. The Tribes shall be added in an expeditious manner as a co-owner to any Wetlands water right acquired by FWS pursuant to the Law of Administration, after the Effective Date.

v. FWS shall be the sole entity entitled to manage the water rights identified in this Article III.C.1.l. The recognition of these co-owned water rights does not confer on the Tribes any authority over the management of the FWS-owned lands to which these water rights are appurtenant.

vi. FWS shall meet and confer with the Tribes on a biennial basis, or on such other timeframe as the Tribes and FWS may mutually agree, to discuss the exercise of these water rights. Such modifications to the meeting schedule are pursuant to, and shall not be deemed an amendment of, this Compact.

D. Instream Flow Water Rights Off of the Reservation.

1. Mainstem Instream Flow Right in the Kootenai River (Basin 76D). The Tribes have an Instream Flow water right for the mainstem of the Kootenai River for the reach and with the associated flow rates set forth in the abstract of water right attached hereto as Appendix 25. The measurement point for this water right is USGS streamflow gage #12305000 located at Leonia, Idaho.

a. The priority date for this water right is time immemorial.

b. The period of use of this water right is January 1 to December 31 of each year.

c. The purpose of this water right is for the maintenance and enhancement of fish habitat to benefit the instream fishery. This right shall not be changed to any other or additional purpose, changed to consumptive use, or transferred to different ownership.

d. The point of diversion and place of use for this water right is instream. This water right shall not be exercised in conjunction with any artificial diversion.

e. The ability to enforce this right shall be suspended so long as Libby Dam remains in existence and the Army Corps of Engineers' operations of that dam are conducted consistently with the 2008 Federal Columbia River Power System Biological Opinion, the 2010 updated Biological Opinion, and the 2014 Supplemental Federal Columbia River Power System Biological Opinion, specifically as described in Reasonable and Prudent Alternative Action (RPA) No. 4 (Storage Project Operations), Table No. 1 (Libby Dam), including the Northwest Power and Conservation Council's 2003 mainstem amendments to the Columbia River Basin Fish and Wildlife Program, or any subsequent Biological Opinion(s) governing the same RPAs and Operations.

f. In the event of changes to the U.S. Army Corps of Engineers' (Corps) responsibilities under the ESA, such as the delisting of resident and anadromous fish species, that no longer require the Corps to operate Libby Dam pursuant to ESA section 7 biological opinions or other substantive ESA requirements, the United States,

acting through the Corps, the Tribes, and the State shall establish written protocols and understandings on meeting and enforcing the Tribes' mainstem Instream Flow right in the Kootenai River while also ensuring that the Corps' operations of Libby Dam meet all Federal statutory and regulatory requirements and obligations. Provided however, that any such enforcement protocol shall not alter the limitations on Call set forth in Article III.D.1.g. The establishment of such protocols and understandings are pursuant to, and shall not be deemed an amendment of, this Compact.

g. Should the suspension on enforcement set forth in Article III.D.1.e be lifted due to the removal of Libby Dam, this water right may be exercised to make a Call only against junior users whose point of diversion is from the mainstem of the Kootenai River and not its tributaries, the purpose of whose rights is irrigation and whose source of supply is surface water, or against junior users the purpose of whose rights is irrigation, whose source of supply is Groundwater that is connected to the mainstem of the Kootenai River, and whose flow rate is greater than 100 gallons per minute.

h. Call may be made only when the average daily flow drops below the enforceable level for the previous 24-hour period.

2. Mainstem Instream Flow Right in the Swan River (Basin 76K). The Tribes have an Instream Flow water right for the reach of the mainstem of the Swan River with the associated flow rates set forth in the abstract of water right attached hereto as Appendix 26. The measurement point for this water right is USGS streamflow gage #12370000 located immediately below Swan Lake near Big Fork, Montana.

a. The priority date for this water right is time immemorial.

b. The period of use of this water right is January 1 to December 31 of each year.

c. The purpose of this water right is for the maintenance and enhancement of fish habitat to benefit the instream fishery. This right shall not be changed to any other or additional purpose, changed to consumptive use, or transferred to different ownership.

d. The point of diversion and place of use for this water right is instream. This water right shall not be exercised in conjunction with any artificial diversion.

e. The Tribes, and/or the United States on behalf of the Tribes, shall be entitled to make a Call to enforce this water right only against junior users the purpose of whose rights is irrigation and whose source of supply is surface water, or against junior users the purpose of whose rights is irrigation, whose source of supply is Groundwater connected to surface sources in Basin 76K and whose flow rate is greater than 100 gallons per minute.

f. Call may be made only when the average daily flow drops below the enforceable level for the previous 24-hour period.

3. Mainstem Instream Flow Right in the Lower Clark Fork River (Basins 76M and 76N). The Tribes have a 5000 cfs Instream Flow water right for the reach of the mainstem of the Clark Fork River as set forth in the abstract of water right attached hereto as Appendix 27. The measurement point for this water right is USGS streamflow gage #12391950 located immediately below Cabinet Gorge Dam in Idaho.

a. The priority date for this water right is time immemorial.

b. The period of use of this water right is January 1 to December 31 of each year.

c. The purpose of this water right is for the maintenance and enhancement of fish habitat to benefit the instream fishery. This right shall not be changed to any other or additional purpose, changed to consumptive use, or transferred to different ownership.

d. The point of diversion and place of use for this water right is instream. This water right shall not be exercised in conjunction with any artificial diversion.

e. The Tribes, and/or the United States on behalf of the Tribes, shall be entitled to make a Call to enforce this water right only against junior users whose point of diversion is from the mainstem of the Clark Fork River and not its tributaries, the purpose of whose rights is irrigation and whose source of supply is surface water, or against junior users the purpose of whose rights is irrigation, whose source of supply is Groundwater connected to the mainstem of the Clark Fork River and whose flow rate is greater than 100 gallons per minute.

f. Call may be made only when the average daily flow drops below the enforceable level for the previous 24-hour period.

g. For so long as the Cabinet Gorge and Noxon Dams remain in existence, the enforceable level of this right is a flow rate equal to the lesser of 5000 cfs or the minimum flow level established by the FERC as a condition on the license for the Cabinet Gorge and Noxon Dams as that license condition may be modified over time.

4. Co-ownership of Instream and Public Recreation Water Rights Held by MFWP.

a. Upon the Effective Date, the Tribes shall be added as a co-owner with MFWP of the Water Rights Arising Under State Law held by MFWP for Instream Flow and recreation purposes that are identified on the tables attached hereto as Appendix 28 and Appendix 29. Nothing in this co-ownership changes any of the other elements of these Water Rights Arising Under State Law, including their priority dates or flow rates.

i. The Water Rights Arising Under State Law identified in Appendix 28 shall be included as part of the

proposed decree to be filed with the Montana Water Court pursuant to Article VII.B.1.

ii. The Water Rights Arising Under State Law identified in Appendix 29 shall proceed through the Montana general stream adjudication as though they were not included in this Compact. MFWP shall make reasonable efforts to defend each of these rights identified in Appendix 29 in the Montana general stream adjudication. The Tribes have the right but not the duty to participate in the defense of these rights in the Montana general stream adjudication.

b. As co-owners, the Tribes and MFWP shall meet and confer on a biennial basis, or on such other timeframe as the Tribes and MFWP may mutually agree, to discuss the exercise of the rights identified in Article III.D.4.a, with a goal of establishing a joint plan for the exercise of these rights. Notwithstanding this planning process, the Tribes and MFWP each retain(s) the unilateral right to exercise each water right identified in Article III.D.4.a as each deem(s) appropriate, but neither the Tribes nor MFWP has any affirmative duty to take any particular action in regard to the exercise of any of these rights.

5. Co-ownership of Water Right Number 76M 94404-00 (Milltown Dam) in Basin 76G (Upper Clark Fork).

a. Upon the date the ratification of this Compact by the Montana Legislature becomes effective under State law, Water Right Arising Under State Law number 76M 94404-00 is changed as follows: the right is split into two separate active and enforceable Water Rights Arising Under State Law, 76M 94404-01 and 76M 94404-02, and the original water right elements are changed to support the maintenance and enhancement of fish habitat and take the form of two enforceable hydrographs. The elements of the changed and split water right are set forth in the two water rights abstracts attached hereto as Appendix 30. The measurement point for 76M 94404-01 is the USGS gage #12334550 at Turah, Montana, and the measurement point for 76M 94404-02 is the USGS gage #1234000 at Bonner, Montana.

i. The period of use of these water rights is January 1 to December 31 of each year.

ii. The point of diversion and place of use for these water rights is instream.

iii. These water rights shall not be exercised in conjunction with any artificial diversion.

iv. MFWP, and the Tribes after they become co-owners, and subject to the limitation on enforcement set forth in Article III.D.5.c, shall be entitled to make a Call to enforce these water rights only against junior users the purpose of whose rights is irrigation and whose source of supply is surface water, or against junior users the purpose of whose rights is irrigation, whose source of supply is Groundwater and whose flow rate is greater than 100 gallons per minute.

v. The enforceable levels of these water rights are identified in the table attached hereto as Appendix 31.

The minimum enforceable level of this right is 700 cfs at the location of USGS gage #1234000 at Bonner, and 500 cfs at the location of USGS gage #12334550 at Turah.

vi. Call may be initiated on the day following a five-consecutive-day-period in which four out of five average daily river flows fall below their respective daily enforceable hydrograph values. Call may persist until such time as two average daily flows of the previous five-consecutive-day-period are in excess of their respective enforceable hydrograph values.

b. Upon the Effective Date, the Tribes shall be a co-owner with MFWP of these water rights. As co-owners, the Tribes and MFWP shall meet and confer on a biennial basis, or on such other timeframe as the Tribes and MFWP may mutually agree to, regarding the exercise of these rights, with a goal of establishing a joint plan for the exercise of these rights. The establishment of such a plan is pursuant to, and shall not be deemed an amendment of, this Compact. Notwithstanding this planning process, the Tribes and MFWP each retains the unilateral right to exercise these water rights as each deems appropriate, but neither the Tribes nor MFWP has any affirmative duty to take any particular action in regard to the exercise of these rights.

c. The ability to enforce these rights shall be suspended for a period of 10 years from the date the ratification of this Compact by the Montana Legislature becomes effective under State law. During and after this period, the Tribes and MFWP shall engage with other stakeholders in the Upper Clark Fork Basin on water management subjects including, but not limited to, drought planning and the exercise of these water rights in conjunction with the other water rights in the Upper Clark Fork Basin.

d. For any analysis of the legal availability of water in the Upper Clark Fork Basin, these rights shall be considered to have a combined year-round flow rate of 2,000 cfs as measured at the location of USGS gauge #12340500 below the confluence of the Blackfoot and Clark Fork Rivers.

e. No owner of these water rights, acting independently or jointly, shall be entitled to lease, sell or change the purpose of these water rights.

f. The Water Rights Arising Under State Law identified in this Article III.D.5 shall be finally decreed as part of the decree of this Compact that will be proposed to the Montana Water Court pursuant to Article VII.B.1.

6. Contract Rights to Stored Water Held by MFWP in Basin 76H (Bitterroot).

a. MFWP is a party to two contracts for the delivery of stored water from Painted Rocks Reservoir: MFWP Water Purchase Contract Painted Rocks, between MFWP and DNRC, July 12, 2004 (attached hereto as Appendix 32); and Water Purchase Contract, March 5, 1958, as amended on March 5, 1958 (attached hereto as Appendix 33). In the event that MFWP obtains an ownership interest in any water rights pursuant to these

contracts or obtains an ownership interest in any water rights pursuant to any future contract for the delivery of water from Painted Rocks Reservoir, MFWP shall expeditiously take all steps necessary to add the Tribes as a co-owner of said water rights.

b. MFWP is a party to a contract for the delivery of stored water from Lake Como: Agreement Between the Bitterroot Irrigation District and the United States Department of the Interior, Bureau of Reclamation for the Operation of the Enlarged Storage Pool at Lake Como, July, 1994 (attached hereto as Appendix 34). In the event that MFWP obtains an ownership interest in any water rights pursuant to this contract, or obtains an ownership interest in any water rights pursuant to any future contract for delivery of water from Lake Como, MFWP shall expeditiously take all steps necessary to add the Tribes as a co-owner of said water rights.

c. MFWP shall manage the Painted Rocks and Como contract rights, in a prudent, biologically based and environmentally sound manner, and within the terms and conditions of these contracts. MFWP will manage in the same manner any future contracts for the delivery of water from Painted Rocks or Lake Como to which MFWP becomes a party. The Tribes are an intended beneficiary of MFWP's management of these contracts, and have the right to challenge MFWP's management decisions in a Court of Competent Jurisdiction.

d. MFWP shall meet and confer with the Tribes on a biennial basis, or on such other timeframe as the Tribes and MFWP may mutually agree to, regarding the management of these contract rights. Such modifications to the meeting schedule are pursuant to, and shall not be deemed an amendment of, this Compact. If the Tribes become co-owners of any water right pursuant to this Article III.D.6 of the Compact, the Tribes and MFWP shall each retain the independent right to exercise each water right as each deems appropriate. Neither the Tribes nor MFWP has any affirmative duty to take any particular action in regard to the exercise of any of such rights. The Tribes do not assume any liability arising out of or resulting from any of the contracts identified in this Article III.D.6 pertaining to co-ownership of rights to stored water in Basin 76H.

7. Instream Flow Right on the North Fork of Placid Creek (Basin 76F). The Tribes have an Instream Flow water right for the upper reach of the North Fork of Placid Creek with the associated flow rates set forth in the abstract of water right attached hereto as Appendix 35. The measurement point for this water right shall be within the main channel of the North Fork of Placid Creek, below the North Fork Placid Creek FIIP Diversion located within the SE 1/4 of the NW 1/4 of the SE 1/4 of Section 29 in Township 17 North Range 16 West.

a. The priority date for this water right is time immemorial.

b. The period of use of this water right is January 1 to December 31 of each year.

c. The purpose of this water right is for the maintenance and enhancement of fish habitat to benefit the

instream fishery. This right shall not be changed to any other or additional purpose, changed to consumptive use, or transferred to different ownership.

d. The point of diversion and place of use for this water right is instream. This water right shall not be exercised in conjunction with any artificial diversion.

e. The Tribes, and/or the United States on behalf of the Tribes, shall be entitled to make a Call to enforce this water right only against junior users the purpose of whose rights is irrigation and whose source of supply is surface water of Placid Creek, or against junior users the purpose of whose rights is irrigation, whose source of supply is Groundwater connected to Placid Creek and whose flow rate is greater than 100 gallons per minute.

f. Call may be made only when the average daily flow drops below the enforceable level for the previous 24-hour period.

8. Instream Flow Rights on Kootenai River Tributaries (Basin 76D). The Tribes have Instream Flow water rights for the reaches of the Kootenai River tributaries Big Creek, Boulder Creek, Steep Creek and Sutton Creek, with the associated flow rates set forth in the abstracts of water right attached hereto as Appendix 36.

a. The priority date for this water right is time immemorial.

b. The period of use of this water right is January 1 to December 31 of each year.

c. The purpose of this water right is for the maintenance and enhancement of fish habitat to benefit the instream fishery. This right shall not be changed to any other or additional purpose, changed to consumptive use, or transferred to different ownership.

d. The point of diversion and place of use for this water right is instream. This water right shall not be exercised in conjunction with any artificial diversion.

e. Water rights held by the United States Forest Service pursuant to the United States Forest Service-Montana Water Rights Compact, 85-20-1401, MCA, shall not be subject to Call by the Tribes and/or the United States on behalf of the Tribes.

f. The recognition of the Instream Flow water rights in this Article III.D.8 does not confer on the Tribes any authority over the management of National Forest System lands within Basin 76D, or any claim to ownership or other rights in that land. With the exception of future diversionary uses by the United States on National Forest System lands in excess of the Forest Service's reserved rights identified in Article III.D.8.e, the Tribes hold the United States harmless for delivery of water or maintenance of flows to meet this Instream Flow water right in Basin 76D.

E. Period of Use. The period of use of the Tribal Water Right set forth in this Article III shall be January

1 to December 31 of each year, provided however, that any portion of that water right that is dedicated to seasonal use, including irrigation use, shall have a period of use as set forth in the abstracts attached hereto as Appendix 5 or as set forth in the registration of such right pursuant to the Law of Administration, as applicable.

F. Points and Means of Diversion. The points and means of diversion for use of the Tribal Water Right set forth in this Article III are as set forth in the abstracts of water rights attached to this Compact or as may be provided for under the Law of Administration.

G. Call Protection.

1. Non-Irrigators. The Tribes, on behalf of themselves and the users of any portion of the Tribal Water Right set forth in this Compact, and the United States agree to relinquish their right to exercise the Tribal Water Right to make a Call against any Water Right Arising Under State Law whose purpose(s) do(es) not include irrigation.

2. Groundwater Irrigators with Flow Rates Less Than or Equal to 100 Gallons Per Minute. The Tribes, on behalf of themselves and the users of any portion of the Tribal Water Right set forth in this Compact and the United States agree to relinquish their right to exercise the Tribal Water Right to make a Call against any Water Right Arising Under State Law whose purpose is irrigation and whose source of supply is Groundwater and whose flow rate is less than or equal to 100 gallons per minute.

3. Irrigators Within the FIIP Influence Area.

a. The Tribes, the United States, and the Project Operator, agree to relinquish their right to exercise the Tribal Water Right to make a Call against that portion of any Water Right Arising Under State Law identified in Article III.G.3.b that is equal to the quantity of water established as the annual FIIP quota for the current irrigation season, or an equivalent farm delivery amount within the FIIP as implemented by the Project Operator within the applicable RDA Area, or the quantity allowed under a claim decreed by the Montana Water Court or water right granted by the DNRC (an Alternate Value), whichever is less, whose owner enters into a consensual agreement as described in this Article III.G.3.

b. Water Rights Arising Under State Law whose owners are eligible to enter into consensual agreements as described in this Article III.G.3 are those rights:

i. whose purpose is irrigation;

ii. whose point(s) of diversion or place(s) of use are within the FIIP Influence Area; and

iii. whose source of supply is surface water; or

iv. whose source of supply is Groundwater and whose flow rate is greater than 100 gallons per minute.

c. The Tribes, the United States, and the Project Operator, agree to enter into the consensual agreement described in this Article III.G.3 with every owner of a Water Right Arising Under State Law described in Article III.G.3.b who wishes to enter into such an agreement. The following conditions shall apply to any such consensual agreement:

i. the owner of a Water Right Arising Under State Law that meets the criteria described in Article III.G.3.b shall measure all diversions, report the measured amount of those diversions to the Project Operator, agree to divert no more water each year than the lesser of the quantity established as the annual FIIP quota or an Alternate Value, and shall not expand water use beyond the terms of the agreement;

ii. the owner of a Water Right Arising Under State Law does not acquire any entitlement to any delivery or diversion of water from the FIIP, whether the water is stored or run of the river, by entering into a consensual agreement as described in this Article III.G.3;

iii. irrigation use pursuant to any Water Right Arising Under State Law whose owner enters into a consensual agreement as set forth in this Article III.G.3 shall be limited to the irrigation season identified annually by the FIIP and to such period of use limitation as may apply to FIIP irrigators;

iv. the method and frequency of measurement of the diversion must be described and occur at a reasonable level of accuracy and frequency to demonstrate that the diversion does not exceed the lesser of the annual FIIP quota for a given irrigation season or an Alternate Value, and;

v. the agreement is permanent and is binding on the heirs and assigns of the owner of each Water Right Arising Under State Law who enters into such agreement.

d. The entering into a consensual agreement as set forth in this subsection (3) does not relieve the owner of any claim to a Water Right Arising Under State Law that is at issue in the Montana general stream adjudication from the obligation of prosecuting that water right claim through the Montana general stream adjudication.

e. If a consensual agreement is entered into among the Tribes, United States, the Project Operator and the owner of a Water Right Arising Under State Law described in Article III.G.3.b prior to the issuance of the final decree for Montana Water Court Basin 76L and 76 LJ, as applicable, that agreement shall terminate as a matter of law if the claimed Water Right is terminated as a result of proceedings conducted in the Montana general stream adjudication.

f. If a consensual agreement is entered into among the Tribes, the United States, the Project Operator, and the owner of a Water Right Arising Under State Law described in Article III.G.3.b prior to the issuance of the final decree for Montana Water Court Basin 76L and 76 LJ, as applicable, and such owner has a claim in the

Montana general stream adjudication that is ultimately decreed a quantity of water for that claim less than the quantity established in the agreement, the consensual agreement shall protect only the lesser amount of water.

g. If the owner of a Water Right Arising Under State Law described in Article III.G.3.b ceases to use that portion of that water right in excess of the lesser of the annual FIIP quota for a given irrigation season, or an Alternate Value, pursuant to a consensual agreement as set forth in Article III.G.3:

i. that nonuse does not represent an intent by the owner of that water right to wholly or partially abandon that water right or to not comply with the terms and conditions of that right; and

ii. the period of nonuse may not create or may not be added to any previous period of nonuse to create a presumption of abandonment.

h. Any use of a Water Right Arising Under State Law subject to a consensual agreement described in this Article III.G.3 exceeding the volume of water specified in the consensual agreement shall be subject to Call by the Tribes, the United States, or the Project Operator for that amount of water in excess of the terms of the consensual agreement.

i. A Person who has both an entitlement to the delivery of water from the FIIP and a Water Right Arising Under State Law to serve the same acreage may only protect from Call, by entering into a consensual agreement pursuant to this Article III.G.3, a total quantity of water equal to the lesser of the annual FIIP quota for a given irrigation season, or an Alternate Value, for each acre served, irrespective of whether the water applied to each acre is pursuant to that Person's FIIP delivery right or that Person's Water Right Arising Under State Law.

4. Water Rights Upstream of the Reservation (Basins 76I, 76J, and 76LJ). The Tribes, on behalf of themselves and the users of any portion of the Tribal Water Right set forth in this Compact, and the United States agree to relinquish their right to exercise the Tribal Water Right to make a Call against any water right located upstream of the Flathead Reservation in Basins 76I, 76J, and 76LJ, except for those Water Rights Arising Under State Law:

a. Whose purpose is irrigation and whose source of supply is surface water, and whose point of diversion is:

i. the mainstem of the Flathead River, including Flathead Lake;

ii. the North Fork of the Flathead River;

iii. the Middle Fork of the Flathead River; or

iv. the South Fork of the Flathead River.

b. Whose purpose is irrigation, whose source of supply is Groundwater connected to one of the sources

identified in Article III.G.4.a, and whose flow rate is greater than 100 gallons per minute.

c. The Tribes and the United States agree that the Tribal Water Right recognized in the Compact may not be exercised to make Call against any Water Right Arising Under State Law upstream of the Flathead Reservation and located on a tributary to the Flathead River not identified in Article III.G.4.a.

5. Water Rights on the Little Bitterroot River Outside the Reservation (Basin 76L). The Tribes, on behalf of themselves and the users of any portion of the Tribal Water Right set forth in this Compact, and the United States agree to relinquish their right to exercise the Tribal Water Right to make a Call against any Water Right Arising Under State Law whose point of diversion is outside the Flathead Reservation and whose source of supply is the Little Bitterroot River or its tributaries.

6. Any Water Right Arising Under State Law the purpose of which is irrigation and that is susceptible to Call by the Tribes pursuant to Article III.D.1.g, III.D.2.e, III.D.3.e, III.D.5.a.iv, III.D.7.e, III.G.4.a, or III.G.4.b whose purpose is changed after the Effective Date to something other than irrigation shall remain susceptible to Call pursuant to the terms and conditions of this Compact as though the purpose of the Water Right Arising Under State Law was still irrigation.

H. Water Rights Arising Under State Law Appurtenant to Lands Acquired by the Tribes. For lands acquired by the Tribes within the Reservation, the Tribes have the right to any Water Right Arising Under State Law acquired as an appurtenance to the land. Starting upon the Effective Date of the Compact, the Tribes may file a Trust Transfer form with the Board for any lands acquired by the Tribes with appurtenant Water Rights Arising Under State Law that have been taken into trust by the United States on behalf of the Tribes, as provided in the Law of Administration and the water right appurtenant to the land shall be transferred to the Tribal Water Right quantified in this Compact with a priority date of July 16, 1855, provided that the Tribes shall continue to use the acquired water right as it was historically used or may change the use of the acquired water right pursuant to the provisions for change of use set forth in Article IV.B.4 and the Law of Administration. Such transfer does not shield the underlying right from abandonment based on acts or omissions of the holder of that water right prior to its acquisition by the Tribes.

## ARTICLE IV - IMPLEMENTATION OF COMPACT

A. Trust Status of Tribal Water Right. The Tribal Water Right shall be held in trust by the United States for the benefit of the Tribes, their members and Allottees.

B. Use of Tribal Water Right.

1. Persons Entitled to Use the Tribal Water Right. The Tribal Water Right may be used by the Tribes,

their members, Allottees, or their lessees or assigns. FIIP customers who have assessed land within the FIIP who are in compliance with the applicable BIA rules and guidelines are entitled to have delivered an equitable share of the FIIP Water Use Right as provided by Article IV.D.2.

2. Effect of Non-Use of the Tribal Water Right. Non-use of all or any portion of the Tribal Water Right described in Article III shall not constitute a relinquishment, forfeiture, or abandonment of such right.

3. Review of Registration of Existing Uses of the Tribal Water Right.

a. Within five (5) years after the Effective Date, the Board shall provide the DNRC with a report, in a form materially consistent with that of abstracts of water rights decreed by the Montana Water Court, of the Tribal Water Right registered pursuant to the Law of Administration as being in existence as of the Effective Date.

b. Within six (6) months after receipt of the report, the DNRC must agree, agree in part, or disagree with the report. If the DNRC takes no action by the end of the six-month period after the report is received, the report shall be deemed accepted. If the DNRC agrees in part or disagrees with the report, the State, the Tribes, and the United States shall meet within ninety (90) days of issuance of the DNRC's notice of disagreement in an effort to resolve the issue(s) giving rise to the disagreement. If, after meeting and conferring, the State, the Tribes, and the United States are still unable to come to agreement on the list of Existing Uses, all disagreements over the contents of the list must be brought to the Water Management Board for resolution of the dispute under Article IV.I.4.c within 180 days of the issuance of the DNRC's notice of disagreement.

4. Changes in Use of the Tribal Water Right. Any user of a portion of the Tribal Water Right who proposes a change of such use must seek authorization to change the use of that portion of the right. Such applications for authorization to change a use shall be heard and decided by the Board pursuant to Article IV.I.4.b of the Compact and the Law of Administration, provided that the Board may not consider any change application of Flathead System Compact Water unless the applicant has secured the written consent of the Tribal Council to apply for a Change in Use authorization.

5. New Development of the Tribal Water Right.

a. The Tribes, or any Person with authorization from the Tribes, may develop a new use of the Tribal Water Right on the Reservation after the Effective Date. Such development may only proceed upon the issuance of an Appropriation Right for the New Development by the Board pursuant to Article IV.I.4.a and the Law of Administration.

b. The Tribes, or any Person with authorization from the Tribes, may develop a new use of the Flathead System Compact Water Right set forth in Article III.C.1.c off the Reservation after the Effective Date, but only after

complying with the provisions of Article IV.B.5.c.

c. Any New Development by the Tribes of a portion of the Tribes' Flathead System Compact Water Right off the Reservation shall be treated as a change in use. The DNRC shall process each change application pursuant to the provisions of 85-2-302, 85-2-307 through 85-2-310, and 85-2-314, MCA. Prior to developing Flathead System Compact Water for beneficial use off the Reservation, the Tribes must comply with the provisions of subsections (1) through (3) and (8) through (17) of 85-2-402, MCA, as those provisions read on December 31, 2014.

d. In the event that, after the date the ratification of the Compact by the Montana Legislature takes effect under State law, the Montana Legislature substantively amends or repeals any of the sections identified in Article IV.B.5.c, the Tribes and the DNRC shall meet no later than 60 days after the effective date of the State legislative action amending or repealing to determine if they can agree whether the provisions of State law set forth in Article IV.B.5.c or the new provisions of State law shall govern the process for off-Reservation development of new uses of the Flathead System Compact Water Right set forth in Article III.C.1.c. In the event that the Tribes and the DNRC are unable to agree, the provisions of State law identified in Article IV.B.5.c shall remain in effect. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact

e. If the Tribes' use of Flathead System Compact Water off the Reservation involves diversion works or facilities for the transport of water located off the Reservation, the Tribes shall apply for and obtain all permits, certificates, variances and other authorizations required by State laws regulating, conditioning or permitting the siting, construction, operation, alteration or use of any equipment, device, facility or associated facility proposed to use or transport water, prior to exercising a use of the Flathead System Compact Water Right off the Reservation.

6. Lease of the Tribal Water Right.

a. Lease of the Tribal Water Right generally.

i. Pursuant to the terms and conditions of this Compact, the Tribes may Lease, for use on or off the Reservation, any portion of the Tribal Water Right set forth in Article III.C.1.a, b, i, and j; provided, that either the Tribes or its assignee, on behalf of the Tribes, first comply with the procedures for changing the use of water rights set forth in subsections iii and iv of this Article IV.B.6.a, as applicable.

ii. The Tribes may make or authorize a Lease of the Tribal Water Right for use within or outside the Reservation; provided that, any Lease shall be for a term not to exceed 99 years, and may include provisions authorizing renewal for an additional term not to exceed 99 years. The off-Reservation use of any portion of the

Tribal Water Right is limited to a place of use within the Flathead or Clark Fork River Basins in Montana.

iii. A Lease of the Tribal Water Right shall not adversely affect a Water Right Arising Under State Law with a priority date before the date of the Lease or an Appropriation Right issued pursuant to this Compact with a priority date before the date of the Lease. Uses of the Tribal Water Right being exercised prior to the date of the Lease shall not be adversely affected by a Lease of the Tribal Water Right, except that the Tribes may allow uses of the Tribal Water Right on Tribally owned land to be adversely affected by declining to object to the Change in Use application associated with the Lease.

1. If the Lease is for use on the Reservation, the determination of adverse effect shall be made by the Water Management Board pursuant to the process set forth regarding applications for Change in Use authorizations under the Law of Administration.

2. If the Lease is for use off the Reservation, the Lease shall be treated as a change in use. The DNRC shall process each change application pursuant to the provisions of 85-2-302, 85-2-307 through 85-2-310, and 85-2-314, MCA. Prior to the lessee putting leased water to beneficial use, the Tribes or their assignee, on behalf of the Tribes, must comply with the following provisions of State law as those provisions read on December 31, 2014:

a. Subsections (1) through (3) and (8) through (17) of 85-2-402, MCA;

b. Subsections (1) through (8) of 85-2-407, MCA, provided, that the term of any such Lease may be for up to 99 years, and the DNRC may approve the renewal of such a Lease for a period of up to 99 years; and

c. 85-2-408, MCA, as limited by the provisions of Article IV.B.6.a.iii.2.a.

iv. In the event that, after the date the ratification of the Compact by the Montana Legislature takes effect under State law, the Montana Legislature substantively amends or repeals any of the sections identified in Article IV.B.6.a.iii.2, the Tribes and the DNRC shall meet, no later than 60 days after the effective date of the State legislative action amending or repealing, to determine if they can agree whether the provisions set forth in Article IV.B.6.a.iii.2 or the new provisions of State law shall govern the process for off-Reservation Leases under this Compact. In the event that the Tribes and the DNRC are unable to agree, the provisions of Article IV.B.6.a.iii.2 shall remain in effect. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

v. The Tribes or any Person using diversion works or facilities for the transportation of water located off the Reservation in connection with a use of the Tribal Water Right shall apply for and obtain all permits, certificates, variances and other authorizations required by State laws regulating, conditioning or permitting the

siting, construction, operation, alteration or use of any equipment, device, or facility proposed to use or transport water, prior to exercising a use of the Tribal Water Right off the Reservation.

b. Lease of the Tribal Water Right by an Individual Indian Owner.

i. An Individual Indian Owner may enter into a Lease to authorize a Person or Persons to use the Individual Indian Owner's allocated portion of the Tribal Water Right on the Reservation.

ii. If the lessee intends to put the water to beneficial use in a manner different than how the Individual Indian Owner had been using the water prior to the date of the Lease, the Individual Indian Owner or the lessee must comply with the provisions of the Law of Administration pertaining to securing Change in Use authorizations from the Water Management Board before the use of water may be changed.

iii. Any Lease entered into pursuant to subsection b of this section may be for a term not to exceed 25 years, and may include provisions authorizing renewal for an additional term not to exceed 25 years.

iv. A Lease of the Tribal Water Right by an Individual Indian Owner shall not adversely affect a Water Right Arising Under State Law with a priority date before the date of the Lease or an Appropriation Right issued pursuant to this Compact with a priority date before the date of the Lease. Uses of the Tribal Water Right being exercised prior to the date of the Lease shall not be adversely affected by a Lease of the Tribal Water Right by an Individual Indian Owner, except that the Tribes may allow uses of the Tribal Water Right on Tribally owned land to be adversely affected by declining to object to the Change in Use application associated with the Lease.

c. Lease of the Flathead System Compact Water Right.

i. Pursuant to the terms and conditions of this Compact, the Tribes may Lease Flathead System Compact Water for use on or off the Reservation, provided that either the Tribes or their lessee comply with the Law of Administration and the relevant provisions of this section, as applicable.

ii. The Tribes shall make available Flathead System Compact Water for short-term Lease within the FIIP or the FIIP Influence Area pursuant to the Shared Shortages provisions set forth at Article IV.E. The Lease term may not exceed the period during which Shared Shortage provisions are in effect. The baseline annual price for this water shall be $8 per Acre-foot plus a $25 administrative fee per Lease as of July 1, 2015. From that date, the baseline annual price and the administrative fee shall be indexed for inflation and consequently adjusted annually on July 1st of each successive year thereafter (the Adjustment Date) by the percentage change over the previous twelve months in the most recent monthly Consumer Price Index for All Urban Consumers (CPI-U) published by the United States Department of Labor, Bureau of Labor Statistics, or such other index as the Parties may agree to use. The initial price for each Lease of any portion of the Flathead System Compact Water

entered into during that year pursuant to the Shared Shortage provisions contained in Article IV.E shall be the adjusted baseline price. During the term of any given Lease, the price per Acre-foot shall continue to adjust annually on the Adjustment Date by the percentage change in the CPI-U, or such other index as the Parties may agree to use, of the previous twelve-month period. The foregoing provisions regarding the adjusted baseline price and per-Lease administrative fee shall constitute the sole and exclusive price terms of each Lease entered under this Article IV.B.6.c.ii. Any modifications of the index are pursuant to, and shall not be deemed an amendment of, this Compact.

iii. The Tribes may make or authorize a Lease of the Tribal Water Right for use within or outside the Reservation; provided that, any Lease shall be for a term not to exceed 99 years, and may include provisions authorizing renewal for an additional term not to exceed 99 years. The off-Reservation use of any portion of the Tribal Water Right is limited to a place of use within the Flathead or Clark Fork River Basins in Montana.

iv. If the Lease is for a portion of the Tribes' Flathead System Compact Water right to be delivered wholly from water stored in Hungry Horse Reservoir, the Tribes shall provide notice to the DNRC and the Water Management Board, in advance of the effective date of the Lease, of the terms of the Lease and any modifications thereto or termination thereof. For Leases lasting one irrigation season or less, notice to the DNRC and the Water Management Board shall be provided as far in advance as practicable. For Leases lasting longer than one year, notice shall be provided to the DNRC and the Water Management Board by the later of 120 days prior to the date on which the Lease is to take effect or March 31 of the year in which the Lease is to take effect. The point of delivery for a Lease shall be the outlet works at the Hungry Horse Dam. If disputes arise between or among holders of Water Rights Arising Under State Law as to the reasonable transmission and carriage losses from the point of delivery to the place of use of the Lease, the district court pursuant to its powers and duties under Title 85, Chapter 5, MCA, shall calculate such losses.

v. Any Lease or portion of a Lease to be delivered from water stored in Hungry Horse Reservoir is subject to reduction due to conditions defined in Appendix 8 on a pro rata basis as set forth in Article III.C.1.c.iii.

vi. If the Lease is for the off-Reservation use of a portion of the Tribes' Flathead System Compact Water right to be delivered from a combination of stored water and direct flow water from the Flathead River, or exclusively from direct flow water from the Flathead River, the Lease shall be treated as a change in use as it pertains to the use of the direct flow water. The DNRC shall process each change application pursuant to the provisions of 85-2-302, 85-2-307 through 85-2-310, and 85-2-314, MCA. Prior to the lessee putting leased water to beneficial use, the Tribes or the lessee must comply with the following provisions of State law as those

provisions read on December 31, 2014:

1. Subsections (1) through (3) and (8) through (17) of 85-2-402, MCA;

2. Subsections (1) through (8) of 85-2-407, MCA, provided, however, that the term of any such Lease may be for up to 99 years, and the DNRC may approve the renewal of such a Lease for a period of up to 99 years; and

3. 85-2-408, MCA, as limited by the provisions of Article IV.B.6.c.vi.1.

vii. In the event that, after the date the ratification of the Compact by the Montana Legislature takes effect under State law, the Montana Legislature substantively amends or repeals any of the sections identified in Article IV.B.6.c.vi.1 through 3, the Tribes and the DNRC shall meet no later than 60 days after the effective date of the State legislative action amending or repealing to determine if they can agree whether the provisions set forth in Article IV.B.6.c.vi.1 through 3 or the new provisions of State law shall govern the process for off-Reservation Leases under this Compact. In the event that the Tribes and the DNRC are unable to agree, the provisions of Article IV.B.6.c.vi.1 through 3 shall remain in effect. Any agreed upon modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

viii. The Tribes or any Person using diversion works or facilities for the transportation of water located off the Reservation in connection with a use of the Flathead System Compact Water Right shall apply for and obtain all permits, certificates, variances and other authorizations required by State laws regulating, conditioning or permitting the siting, construction, operation, alteration or use of any equipment, device, or facility proposed to use or transport water, prior to exercising a use of the Flathead System Compact Water Right off the Reservation.

7. Lease of 11,000 Acre-Feet per Year of Water From Hungry Horse Reservoir for Off-Reservation Mitigation.

a. The Tribes shall make available for Lease off the Reservation 11,000 Acre-feet of the water identified in Article III.C.1.c.i stored in Hungry Horse Reservoir pursuant to the process, and subject to the terms and conditions, set forth in this Article IV.B.7.

b. The water identified in Article IV.B.7.a shall be available for the mitigation of net depletions arising from new or existing domestic, commercial, municipal and/or industrial uses of water at any point in the Flathead or Clark Fork Basins in Montana for which the 11,000 Acre-feet per year of water is capable of providing mitigation.

c. The DNRC, under Title 85, MCA, shall retain the responsibility for determining if, when, where, and how much mitigation water is needed for any proposed new development and if the water identified in Article

IV.B.7.a meets the appropriate mitigation criteria for any proposed mitigation plan.

d. The water identified in Article IV.B.7.a is subject to reduction due to conditions defined in Appendix 8 on a pro rata basis as set forth in Article III.C.1.c.iii.

e. The mechanism for entering into a Lease for any portion of the water set forth in this Article IV.B.7.a shall be as follows:

i. Any interested Person may approach the Tribes, through the Tribal Lands Department or successor Tribal department, to negotiate a Lease of a portion of this water;

ii. The baseline annual per Acre-foot price for this water shall be set at $40 as of July 1, 2015. From that date, the baseline price shall be indexed for inflation and consequently adjusted annually on July 1st of each year thereafter (the Adjustment Date) by the percentage change over the previous year in the most recent monthly Consumer Price Index for All Urban Consumers (CPI-U) published by the United States Department of Labor, Bureau of Labor Statistics, or such other index as the Parties may agree. The initial price for each Lease of any portion of the 11,000 Acre-feet identified in this Article IV.B.7 entered into during that year shall be the adjusted baseline price. During the term of any given Lease, the price per Acre-foot shall continue to adjust annually on the Adjustment Date by the percentage change in the CPI-U, or such other index as the Parties may agree to use, of the previous twelve-month period. The foregoing provisions regarding the adjusted baseline price shall constitute the sole and exclusive price term of each Lease;

iii. Each Lease between the Tribes and a lessee shall be for a term of 99 years, with the lessee holding an option to renew for an additional 99 years, unless the Tribes and the lessee affirmatively agree on an alternate duration not to exceed 99 years. Any Lease including a term of alternate duration may also include an option to renew for a term not to exceed 99 years; and

iv. The Tribes and each prospective lessee shall negotiate any and all other non-price terms of the Lease arrangement.

f. In the event of an impasse between the Tribes and a prospective lessee over any non-price term, the prospective lessee may file a notice of impasse with the Water Management Board, invoking the Board's authority to resolve any such impasse pursuant to the process set forth in Article IV.B.7.g.

g. Process for resolving disputes over Lease terms.

i. Upon receipt of a notice of impasse, the Board shall date stamp it. Within three days of the filing of a notice of impasse, the Board shall provide notice of the filing to the Tribes, with a copy to the prospective lessee, identifying a date certain between 30 and 60 days from the date of receipt of the notice for the Tribes and the

prospective lessee each to submit a last, best offer concerning all of the non-price terms.

ii. No later than the date set by the Board, the Tribes and the prospective lessee shall file a last, best offer with the Board in the form of a proposed Lease agreement and shall serve the same on each other. To be filed, the offer must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing. Immediately upon receipt by the Board, the offers shall be date stamped. If the Tribes fail to timely file an offer, the offer filed by the prospective lessee shall become the terms of the Lease. If the prospective lessee fails to timely file an offer, no Lease shall be concluded.

iii. The Board shall issue a decision selecting one side's offer or the other's between 15 and 45 days after the filing of the offer. At any time prior to the Board's decision, the prospective lessee may choose to withdraw the prospective lessee's offer and decline to enter into the Lease.

iv. The Board shall provide notice of its decision to both the Tribes and the prospective lessee. The Lease shall be concluded on the terms selected by the Board, but must include the price term identified in Article IV.B.7.e.ii of this Compact. The effective date of the Lease shall be ten days after the Board's issuance of its decision.

v. The Tribes or a prospective lessee dissatisfied with a decision of the Board made pursuant to this Article IV.B.7.g may appeal that decision by filing a petition for judicial review with a Court of Competent Jurisdiction within 30 days of the issuance of the Board's decision. The court shall review the Board's decision for abuse of discretion.

C. Exercise of Certain Portions of the Tribal Water Right Related to the FIIP.

1. Priority for the Exercise of the FIIP Instream Flow and FIIP Water Use Rights. Once the water rights described in Article III.C become enforceable, the following relative priorities among those rights shall apply:

a. Minimum Enforceable Instream Flows.

b. Minimum Reservoir Pool Elevations.

c. River Diversion Allowances.

d. Target Instream Flows.

2. Reallocated Water in excess of Target Instream Flows will be split as equally as hydrologically practicable between the Instream Flow water rights set forth in Article III.C.1.d.ii and the FIIP Water Use Right set forth in Article III.C.1.a.

3. MEF and TIF implementation and schedule. Exercise of FIIP Instream Flow Rights set forth in Article

III.C.1.d.ii shall be accomplished through the implementation and enforcement of MEFs and TIFs and is subject to the Shared Shortage and Adaptive Management provisions set forth in Article IV.E and F and Appendix 3.5.

a. MEFs and TIFs shall be enforceable at the values set forth in Appendix 3.1.

b. Implementation and enforceability of MEFs and TIFs.

i. Incremental implementation of Operational Improvements will result in additional FIIP Instream Flow.

ii. MEFs and TIFs shall be enforceable following the completion of Operational Improvements according to the schedule attached hereto as Appendix 3.4.

iii. Reallocated Water from Rehabilitation and Betterment Projects shall be used to incrementally achieve FIIP Instream Flows set forth in Article III.C.1.d.ii.

iv. If the schedule attached hereto as Appendix 3.4 cannot be met due to lack of available funding or other circumstances outside of the control of the Parties or Project Operator, the Parties may agree to adjust the schedule as necessary to allow for timely implementation of MEFs and TIFs. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

v. If the Project Operator fails to implement the schedule attached hereto as Appendix 3.4 due to acts, errors, or omissions of the Project Operator, MEFs and TIFs will be enforceable as though the schedule had been implemented.

c. Until an MEF has become enforceable, the interim Instream Flow, where applicable, for that location shall be the enforceable Instream Flow. Where the Instream Flow has been incrementally increased above the interim Instream Flow level as a result of the partial completion of actions listed in the Implementation Schedule attached hereto as Appendix 3.4, the incrementally achieved level may be maintained until the MEF is achieved.

d. Until a Minimum Reservoir Pool Elevation has become enforceable, the interim reservoir pool elevation, where applicable, for that location shall be enforced.

e. TIFs shall be determined seasonally according to Appendix 3.5, and will vary between the wet and normal year levels attached hereto as Appendix 3.1.

4. Minimum Reservoir Pool Elevations. Minimum Reservoir Pool Elevations attached hereto as Appendix 3.1 shall be enforceable according to the schedule specified in Appendix 3.4. Enforceability of Minimum Reservoir Pool Elevations is subject to Article IV.E, Appendix 3.5, and superseding Federal law allowing for regulation of reservoir elevations.

D. Exercise of the FIIP Water Use Right.

1. FIIP Water Use Right.

a. The FIIP Water Use Right shall be satisfied by meeting the RDA values for each RDA Area attached hereto as Appendix 3.2 and as evaluated pursuant to Article IV.D.1.e.

b. RDAs shall be enforceable according to the schedule attached hereto as Appendix 3.4, subject to evaluation pursuant to Article IV.D.1.e.

c. Headworks diversion amounts shall be progressively adjusted to achieve the RDAs as Operational Improvements are completed pursuant to Appendix 3.4.

d. Once RDAs are achieved through completion of Operational Improvements, headworks diversion amounts shall be progressively adjusted as Rehabilitation and Betterment is completed pursuant to Appendix 3.6. The enforceable RDA for the location in which a particular Rehabilitation and Betterment project has been completed is the amount defined in Appendix 3.2, reduced by the volume of Reallocated Water made available by that Rehabilitation and Betterment project. The amount actually diverted may be adjusted pursuant to the evaluation process described in Article IV.D.1.e.

e. RDA values shall be evaluated to ensure their adequacy to meet Historic Farm Deliveries. Initial evaluation of RDAs shall occur once the Parties and Project Operator have completed all Operational Improvements in a given RDA Area according to the schedule attached hereto as Appendix 3.4. Evaluation of RDAs will continue as part of the responsibilities of the CITT described in Appendix 3.5 as follows:

i. The Project Operator must measure and record farm turnout deliveries within a given RDA Area.

ii. If the aggregate measured deliveries to farm turnouts do not meet Historic Farm Deliveries for a given RDA Area, actual diversions shall be adjusted to assure that Historic Farm Deliveries are met for wet, normal and dry water years. If water in excess of the RDA is needed to meet Historic Farm Deliveries, it will be provided through an increase of the Flathead River pumping plant diversion allowed by the Flathead Pumping Station RDA attached hereto as Appendix 3.2. If the aggregate measured deliveries to farm turnouts exceed Historic Farm Deliveries within an RDA Area, the actual diversions shall be reduced accordingly.

iii. Any adjustment of actual diversions pursuant to this section shall not result in decrease of the MEFs, TIFs, or Minimum Reservoir Pool Elevations.

f. RDAs are quantified for wet, normal, and dry Natural Flow years, attached hereto as Appendix 3.2, and shall be set each year according to the process specified in Appendix 3.5.

2. FIIP Delivery Entitlement Statement. Assessed land within the FIIP is entitled to have water delivered by the Project Operator if the FIIP customer is in compliance with the applicable BIA rules and guidelines for FIIP. Beginning on the Effective Date, an owner of assessed land within the FIIP may request of the Project Operator

a delivery entitlement statement, which must be tendered within 90 days of the request or denied for cause. Beginning on the date one year after the Effective Date, the delivery entitlement statement must be tendered or denied within 30 days. The delivery entitlement runs with the land and is valid so long as the land remains assessed and the FIIP customer is in compliance with the applicable BIA rules and guidelines for FIIP.

E. Shared Shortages Provision.

1. In the event that water supplies are inadequate to simultaneously satisfy an enforceable Instream Flow water right and a corresponding RDA, the provisions of Article IV.E govern the exercise of the water rights set forth in Articles III.C.1.a and III.C.1.d.ii and iv at that location. The CITT shall determine when Shared Shortages conditions begin and end as specified in Appendix 3.5.

2. For purposes of Article IV.E, once MEFs and RDAs have become enforceable, they shall be maintained at the levels set forth in Appendices 3.1 and 3.2, as adjusted pursuant to Article IV.D.1.e. Prior to enforceability of the MEF and RDA levels attached hereto as Appendices 3.1 and 3.2, Instream Flows will be maintained as provided by Article IV.C.3.c and RDAs will be maintained as provided by Article IV.D.1.b and c.

3. Subject to the priority system set forth in Article IV.C.1, RDAs shall be maintained by implementing the following measures in the order of priority set forth below:

a. Available Natural Flow or regulated streamflow shall be diverted by the Project Operator to satisfy RDAs.

b. If the application of Article IV.E.3.a does not satisfy RDAs, Flathead River pumping plant diversions shall be increased as allowed by the Flathead Pumping Station RDA attached hereto as Appendix 3.2.

c. If the application of Article IV.E.3.a and b does not satisfy RDAs, FIIP reservoirs may be reduced below the Minimum Reservoir Pool Elevations specified in Appendix 3.1 to supply RDAs, subject to Article IV.E.5.

d. If the application of Article IV.E.3.a through c does not satisfy RDAs, the Tribes shall make available for short-term lease Flathead System Compact Water for use within the FIIP as provided by Article IV.B.6.c.ii.

4. Within the Basin 76LJ portion of the Little Bitterroot Valley, RDAs shall be maintained by sequentially applying the procedures in Article IV.E.3.a through c, where applicable.

5. As set forth in Article IV.E.3.c, FIIP reservoirs may be reduced below the Minimum Reservoir Pool Elevations set forth in Article III.C.1.e to support RDAs as follows:

a. FIIP reservoirs may be reduced pursuant to this section for no more than four consecutive years.

b. Article IV.E.3.c does not apply to Mission Reservoir.

c. FIIP reservoirs may not be reduced below the interim reservoir pool elevations set forth in Article

III.C.1.e.iv and attached hereto as Appendix 13.

d. RDAs may be met from carryover reservoir storage, at the discretion of the Project Operator.

F. Requirement to Implement Adaptive Management and Water Measurement.

1. The Parties agree that Adaptive Management and a comprehensive water measurement program, as described in Appendix 3.5, are essential to the successful implementation of this Compact.

2. The Parties, upon mutual written agreement, and in conformance with the Compact and other applicable provisions of law, may amend Appendix 3.5. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

G. Compact Implementation Technical Team. Within six months of the date the ratification of the Compact by the Montana Legislature takes effect under State law, the Parties shall establish a Compact Implementation Technical Team (CITT) to allow planning for and implementation of Operational Improvements, Rehabilitation and Betterment, and Adaptive Management prior to and following the Effective Date.

1. The CITT membership shall be as provided for in Appendix 3.5.

2. The CITT shall carry out the duties specified by Appendix 3.5.

3. The CITT shall develop criteria for prioritizing and selecting projects.

4. Public Meetings and Records:

a. All regularly scheduled meetings of the CITT shall be open to the observation of the general public pursuant to State and Tribal open meeting laws. Where there is a conflict of laws, the law that provides for greater openness to the public applies.

b. CITT records are public records and shall be made available to the public for inspection under such reasonable terms and conditions as the CITT shall establish.

5. Disputes Related to the Compact Implementation Technical Team. The Parties agree to perform each obligation set forth in this Compact in good faith and with diligence and loyalty to this agreement. The Parties shall form a Compact Management Committee (CMC) comprised of the Director of the Montana Department of Natural Resources, the Chairman of the Tribal Council, and the Regional Director of the Northwest Region of the Bureau of Indian Affairs or their designees. The CMC will provide policy and administrative oversight of the CITT.

a. The CITT shall attempt to reach consensus on all of its actions.

b. Where consensus is not achieved, the CITT will resolve disputed issues by majority vote.

c. If the CITT vote results in a tie, or is appealed, the disputed issue will be referred to the CMC. The CMC will review and attempt to reach consensus on the disputed issue and if consensus is not possible, will

resolve the issue by majority vote.

d. A majority vote of the CMC may be appealed using the following procedures:

i. Disputes arising out of any act, failure to act, error or omission of the BIA or Project Operator involving Operational Improvements or Rehabilitation and Betterment or otherwise affecting real property owned by the United States may be appealed under Title 25, Part 2, Code of Federal Regulations.

ii. For disputes raising questions of Compact interpretation, the CMC shall immediately seek a determination of those questions from the Water Management Board, which determination will be provided in writing within 30 days.

iii. All other disputes may be appealed to a Court of Competent Jurisdiction. In considering a petition for relief, a Court of Competent Jurisdiction will review the CMC's legal conclusions for correctness and its factual findings for abuse of discretion.

H. Power Provisions

1. Low-Cost Block of Power

The Parties recognize that Article 40 of the Kerr Project License, as amended, jointly issued to the Montana Power Company and the Tribes for the Kerr Project, Project No. 5, requires Montana Power Company, through its successor-in-interest, NorthWestern Energy, to make available the capacity and energy up to 3.734 megawatts at up to 100 percent load factor during the months of April through October to the United States, for and on behalf of the FIIP, at the rates set forth in and adjusted in accordance with such Article.

The Parties agree that the Kerr Project License Article 40 Low Cost Block of Power is equivalent to the delivery of 19,178,000 kilowatt hours of electricity per year, and generally supplies electricity necessary to pump approximately 46,000 Acre-feet of water per year to the FIIP. If the operation and maintenance, and all other rights and responsibilities for the Kerr Project are assumed by the Tribes or their wholly-owned corporation, the Tribes agree, to the extent permitted under applicable license(s) and Federal law, to make the Low Cost Block of Power available in the same manner and at the same rates, as adjusted, as NorthWestern Energy. If the Tribes seek a new license for the Kerr Project, the Tribes or their wholly-owned corporation, agree that their license application will request authority from FERC to make the Low Cost Block of Power available in the same manner and at the same rates, as adjusted, as NorthWestern Energy.

2. Net Power in Excess of Low Cost Block

For purposes of Article IV.E, power required to run the Flathead Pumping Station in excess of the Low Cost Block of Power identified in Article IV.H.1 shall be purchased at the price at which Mission Valley Power sells

power for irrigation purposes.

3. Net Power Revenues

The State and Tribes agree to seek provisions in the Federal legislation ratifying this Compact for Mission Valley Power to budget annually for an anticipated amount of $200,000 of Net Power Revenues to be made available in the subsequent year to meet the needs of both the power system and the FIIP with an initial allocation of the Net Power Revenue that provides fifty percent to the Project Operator and fifty percent to the Tribes. These funds shall only be used for work on the FIIP that has significant fisheries, water conservation, or water management benefits. If on an annual basis such work by the Project Operator or the Tribes does not require the full amount of such net revenues the remainder shall be set aside and accumulated for future expenditure for these purposes. This initial allocation may be changed by mutual agreement of the Parties within nine (9) years of the Effective Date, with any subsequent agreement to become effective on the tenth (10th) anniversary of the Effective Date. Any such modification is pursuant to, and shall not be deemed an amendment of, this Compact.

I. Administration: Establishment of Flathead Reservation Water Management Board.

1. Establishment of Board. There is hereby established the Flathead Reservation Water Management Board. Upon the Effective Date, the Board shall be the exclusive regulatory body on the Reservation for the issuance of Appropriation Rights and authorizations for Changes in Use of Appropriation Rights and Existing Uses, and for the administration and enforcement of all Appropriation Rights and Existing Uses. The Board shall also have exclusive jurisdiction to resolve any controversy over the meaning and interpretation of the Compact on the Reservation, and any controversy over the right to the use of water as between the Parties or between or among holders of Appropriation Rights and Existing Uses on the Reservation except as explicitly provided otherwise in Article IV.G.5. The jurisdiction of this Board does not extend to any water rights whose place of use is located outside the exterior boundaries of the Reservation.

2. Membership.

a. Voting Members. The Board shall consist of five voting members: two members selected by the Governor of the State pursuant to Article IV.I.2.b, after consultation with holders of Water Rights Arising Under State Law located on the Reservation; two members appointed by the Tribal Council; and one member selected by the other four members. All members shall be appointed within six months of the Effective Date.

b. Appointment by Governor. Within 90 days of the Effective Date, or 15 days of any vacancy in one or more of the Board positions selected by the Governor, the commissioners of each county whose boundaries

include any portion of the Reservation shall nominate individuals for the Governor's consideration for appointment to the Board as follows:

i. The Commissioners of Lake County shall choose five (5) nominees;

ii. The Commissioners of Sanders County shall choose three (3) nominees;

iii. The Commissioners of Missoula County shall choose two (2) nominees;

iv. The Commissioners of Flathead County shall choose one (1) nominee; and

v. Each nominee must meet the eligibility requirements of Article IV.I.2.f.

The Governor shall choose two Board members from the group of nominees. If the county commissioners fail to nominate a minimum of seven (7) individuals for selection by the Governor within the time set forth in Article IV.I.2.b, the Governor may select any two individual(s) who meet the eligibility requirements set forth in Article IV.I.2.f after consultation with Holders of Water Rights Arising Under State Law located on the Reservation.

c. Should the four appointed members fail to agree on the selection of a fifth voting member within sixty days of the date of appointment of the fourth member, or within thirty days after any vacancy in that fifth position occurs, the following procedure shall be utilized:

i. Within five days thereafter the two members appointed by the Tribal Council shall nominate three individuals to serve as a member of the Board and the two members appointed by the Governor shall nominate three individuals to serve as a member of the Board;

ii. Within fifteen days thereafter the two members appointed by the Tribal Council shall reject two of the individuals nominated by the two members appointed by the Governor, and the two members appointed by the Governor shall reject two of the individuals nominated by the two members appointed by the Tribal Council; and

iii. Within five days thereafter, the remaining two nominees shall be submitted to the Chief Judge of the United States District Court for the District of Montana for selection of the fifth member of the Board.

d. Ex Officio Member. The Board shall also have a sixth, non-voting member appointed by the Secretary.

e. Term. Initially, three voting members of the Board shall serve for four years, and two shall serve for two years. One member appointed by the Governor, one member appointed by the Tribal Council and the fifth voting member shall serve for four years. One member appointed by the Governor and one member appointed by the Tribal Council shall serve for two years. The member appointed by the Secretary shall be appointed for four years. At the expiration of the initial two-year appointments, all subsequently appointed Board members shall serve four year terms.

f. Eligibility. To be eligible to serve on the Board, an individual must be over 18 years of age and be a Reservation resident. For the purposes of filling a position on the Water Management Board, a Reservation resident is an individual who:

i. does business within Flathead Indian Reservation boundaries;

ii. is domiciled within Flathead Indian Reservation boundaries; or

iii. owns and maintains a seasonal residence within Flathead Indian Reservation boundaries.

An eligible individual must also have education and experience in one or more of the following fields: natural resources management, public administration, agriculture, engineering, commerce or finance, hydrology, biological sciences, water law or water policy.

No elected official of the State of Montana, or any political subdivision thereof, or of the United States, or of the Tribes is eligible for nomination to the Board while holding such elective office. However, a nominee for Board membership shall not be disqualified by reason of the fact that he or she is an employee or contractor of the State of Montana or any political subdivision thereof, or of the Tribes, or of the United States.

No Board member may vote on any application or appeal that the member participated in personally and substantially in any non-Board capacity.

g. Vacancies. Subject to the provisions of Article IV.I.2.a and c regarding the filling of a vacancy of the fifth member of the Board, upon the occurrence of any other vacancy in a Board position, the Tribal Council, if the vacancy is in a position appointed by the Tribal Council, or the Governor, if the vacancy is in a position appointed by the Governor, shall name a new Board member within 30 days of the occurrence of the vacancy. Should Board action be required during the period of any such vacancy, the Department Head of the Tribal Natural Resources Department, if the vacancy is in a position appointed by the Tribal Council, or the Director of the DNRC, if the vacancy is in a position appointed by the Governor, shall fill the vacant position on an acting basis until a new appointment is made.

h. Compensation and Expenses of the Board. Each Board member shall receive such compensation for services and reimbursement for expenses for attendance at Board meetings as shall be fixed by the State and the Tribal Council for the Board members appointed by the same. The compensation for the fifth Board member shall be set jointly by the State and the Tribal Council. The expenses of the Federal ex officio member shall be covered by the United States.

3. Quorum and Vote Required. Four Board members appointed pursuant to Article IV.I.2.a shall constitute a quorum. No Board action may be voted upon in the absence of a quorum. All Board decisions shall be by

affirmative vote of a majority of the Board, except as set forth in Article IV.I.5.d for the appointment of water commissioners. If a proposal put to a vote of a quorum of Board members ends in a tie vote, the proposal is deemed disapproved or denied.

4. Jurisdiction of the Board.

a. Issuance of Appropriation Rights. Upon the Effective Date, the Board shall have exclusive jurisdiction over the issuance of all new Appropriation Rights on the Reservation. The process for the consideration, issuance or denial of all Appropriation Rights is set forth in the Law of Administration.

b. Authorizations for Changes in Use. Upon the Effective Date, the Board shall have exclusive jurisdiction over the issuance of authorizations for Changes in Use of all water rights on the Reservation. The process for the consideration, issuance or denial of such Change in Use authorizations is set forth in the Law of Administration.

c. Enforcement. Upon the Effective Date, the Board shall have the jurisdiction to enforce the terms of this Compact as provided by Article IV.I.1. All controversies cognizable under this subsection shall be heard and resolved pursuant to the Compact and the Law of Administration.

d. Water Right Ownership Updates. The Board shall not have jurisdiction over water right ownership updates on water rights appurtenant to fee lands, which shall remain with the DNRC as set forth in 85-2-421 through 85-2-424, 85-2-426, and 85-2-431, MCA.

5. Powers and Duties.

a. In General. The Board shall have the power to promulgate procedures, prescribe forms, develop additional materials and implement amendments thereto as may be necessary and proper to exercise its jurisdiction and carry out its assigned functions under this Compact and the Law of Administration. A set of forms for initial use by the Board in the implementation of the Law of Administration is attached hereto as Appendix 37. The Board may amend these forms at its discretion. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

b. Hearings. Pursuant to the procedures set forth in the Law of Administration, the Board shall hold hearings upon notice in proceedings before it and shall have the power to administer oaths, take evidence and issue subpoenas to compel attendance of witnesses or production of documents or other evidence, and to appoint technical experts. The Tribes and the State shall enforce the Board's subpoenas in the same manner as prescribed by the laws of the Tribes and the State for enforcing a subpoena issued by the courts of each respective sovereign in a civil action. The Persons involved in the controversy may present evidence and

cross-examine any witnesses. The Board shall cause all hearings to be recorded, and shall determine the controversy and grant any declaratory or injunctive relief allowed by the Law of Administration, including a temporary order. The Board shall not have power to award money damages, attorneys' fees or costs; however it shall have the power to impose fines pursuant to the terms of the Law of Administration and award any kind of equitable relief. All decisions of the Board shall be in writing, and, together with a written justification for the decision and any dissenting opinions, shall be served personally or by certified mail on all Persons involved in the proceeding before the Board. All records of the Board shall be open to public inspection.

c. Employment of Water Engineer. The Board shall have the authority to employ a Water Engineer to carry out such functions as assigned by the Board pursuant to the Law of Administration, including the supervision of any water commissioners appointed by the Board. As set forth in the Law of Administration, the Engineer shall hold hearings upon notice in proceedings before the Engineer and shall have the power to administer oaths, take evidence and issue subpoenas to compel attendance of witnesses or production of documents or other evidence, and to appoint technical experts. The Tribes and the State shall enforce the Engineer's subpoenas in the same manner as prescribed by the laws of the Tribes and the State for enforcing a subpoena issued by the courts of each respective sovereign in a civil action. The Persons involved in the controversy may present evidence and cross examine any witnesses. The Engineer shall cause all hearings to be recorded, and shall determine the controversy and grant any relief allowed by the Law of Administration, including a temporary order. All decisions of the Engineer shall be in writing, and, together with a written justification for the decision, shall be served personally or by certified mail on all Persons involved in the proceeding before the Engineer. All records of the Engineer shall be open to public inspection.

d. Appointment of Water Commissioner(s)

i. The Board shall have the authority, upon a unanimous vote of all five members of the Board, to appoint one or more commissioners to provide day-to-day administration of water on the Reservation. The compensation for any such commissioner and the identification of the Person(s) responsible for paying costs associated with the appointment of any such commissioner must also be established by a unanimous vote of all five members of the Board as part of the Board action appointing any such commissioner. Any commissioner appointed shall act under the supervision of the Water Engineer.

ii. Under the jurisdiction of the Board, and as set forth in the Law of Administration, the commissioner(s) shall have the authority to administer and distribute water only on the Reservation. The authority of any commissioner(s) appointed pursuant to this subsection, as it pertains to portions of the Tribal Water Right used

within the FIIP, extends only to the delivery of water to FIIP diversion facilities and shall not extend to the administration of that water in FIIP facilities or on lands served by the FIIP, which shall remain subject to the authority of the Project Operator.

6. Review and Enforcement of Board Decisions.

a. Decisions by the Board shall be effective immediately, unless stayed by the Board. Persons involved in the proceedings before the Board may appeal any final decision by the Board to a Court of Competent Jurisdiction within thirty days of such decision. An appeal of a final decision of the Board shall be styled as a petition for judicial review of an agency decision pursuant to the rules of procedure of the court from which review is sought. The petition for judicial review shall be filed with the Board and the court and served upon all Persons involved in the proceeding before the Board, as well as the Tribes, the State and the United States. Service shall be accomplished according to the requirements of the court's rules of procedure.

b. Unless a petition is filed within thirty days of a final decision of the Board, as provided in Article IV.I.6.a, any decision of the Board shall be recognized and enforced by any court with personal and subject matter jurisdiction over the matter on petition by any Person, or a successor in interest, before the Board in the proceeding in which the decision was made.

c. A Court of Competent Jurisdiction in which a timely petition is filed pursuant to Article IV.I.6.a, or any court with personal and subject matter jurisdiction over the matter in which a petition to confirm or enforce is filed pursuant to Article IV.I.6.b, may order such temporary or permanent relief as it considers just and proper subject to the limited waivers of immunity set forth in Article IV.I.8.

d. An appeal may be taken from any decision of the court in which a timely appeal is filed pursuant to Article IV.I.6.a, or in which a petition to confirm or enforce is filed pursuant to Article IV.I.6.b, in the manner and to the same extent as from orders or judgments of the court in a civil action.

e. In any petition to confirm or enforce the Board's decision, the Board shall file with the court to which appeal is taken the record of the proceedings before the Board within the time and in the manner provided by the court's rules of procedure.

f. The appellate court shall conduct the review on the record made before the Board. In considering the petition, the Board's legal conclusions shall be reviewed for correctness and its factual findings for abuse of discretion.

g. In the event that a court determines that it lacks subject matter or personal jurisdiction to rule on a petition for judicial review of a Board decision, the party filing the petition shall be entitled to petition for judicial

review from any other Court of Competent Jurisdiction within thirty days from the date of a final court order finding a lack of jurisdiction.

7. Public Meetings and Records

a. Notwithstanding any other provisions of law, the Board is a public agency for purposes of the applicability of State and Tribal right to know laws.

b. All regular and special meetings of the Board, including all hearings conducted by the Office of the Engineer or the Board, shall be open to the observation of the general public pursuant to State and Tribal open meeting laws. Where there is a conflict of laws, the law that provides for greater openness to the public applies.

c. Where no more specific notice provisions are set forth in the Law of Administration, notice of any meeting, including an agenda, shall be provided to the public in a manner and timeframe consistent with the criteria set forth in State and Tribal law. Where there is a conflict of laws, the law that provides for earlier notice shall apply.

d. The Board shall keep the following records:

i. minutes of all meetings;

ii. recordings of all hearings conducted by the Board or the Office of the Engineer;

iii. all documents filed with or generated by the Board or the Office of the Engineer;

iv. any other records required by applicable provisions of Federal, State or Tribal law, provided that if there is a conflict of laws, the law that provides for more expansive record retention shall apply.

e. All Board records are public records and shall be made available to the public for inspection under such reasonable terms and conditions as the Board shall establish.

8. Waiver of Immunity. The Tribes and the State hereby waive their respective immunities from suit, including any defense the State shall have under the Eleventh Amendment of the Constitution of the United States, in order to permit the resolution of disputes under the Compact by the Board, and the appeal or judicial enforcement of Board decisions as provided herein, except that such waivers of sovereign immunity by the Tribes or the State shall not extend to any action for money damages, costs, or attorneys' fees. The Parties recognize that only Congress can waive the immunity of the United States and that the participation of the United States in the proceedings of the Board shall be governed by Federal law, including 43 U.S.C. 666.

J. Amendments to the Law of Administration. The Board may not amend the Law of Administration. No amendment by the Tribes or the State of the Law of Administration shall be effective unless and until the other makes an analogous amendment. Such modifications are pursuant to, and shall not be deemed an amendment

of, this Compact.

K. Water Rights Database. The Board shall cause all Appropriation Rights and Changes in Use authorized by the Board and all uses of water registered pursuant to the Law of Administration to be entered into the DNRC water rights database in a format agreed to by the Board and the DNRC.

ARTICLE V - DISCLAIMERS AND RESERVATION OF RIGHTS

A. No Effect on Water Rights of Other Tribes or on other Federal Reserved Water Rights.

1. Except as otherwise provided herein, the relationship between the Tribal Water Right described herein and any water rights of any other Indian tribe or its members, or of any federally-derived water right of an individual outside the boundaries of the Flathead Indian Reservation, or of the United States in its own right or on behalf of such other tribes or individuals, shall be determined by the rule of priority.

2. Nothing in this Compact shall be construed or interpreted as a precedent to establish the nature, extent, or manner of administration of the rights to water of any other Indian tribe, its members or Indian owners of trust land outside of the Flathead Indian Reservation.

3. Nothing in this Compact is intended, nor shall it be used, to affect or abrogate a right or claim of an Indian tribe other than the Confederated Salish and Kootenai Tribes.

4. Except as provided herein and authorized by Congress, nothing in this Compact shall be construed or interpreted to establish the nature, extent, or manner of administration of rights to water of the United States on Federal lands outside of the Flathead Indian Reservation.

B. General Disclaimers. Nothing in this Compact shall be construed or interpreted:

1. To preclude the Tribes, Tribal members, and Allottees, or the United States, from applying to the Water Management Board for an Appropriation Right under the Law of Administration on the same basis as any other Person;

2. As a precedent for litigation of aboriginal or reserved water rights;

3. As precedent for interpretation or administration of future compacts between the United States and the State, or between the United States and any other state, or between the State and any other state;

4. As precedent for negotiation, interpretation or administration of any existing or future Compact, negotiated settlement, judicial settlement or other form of accommodation of water rights involving Indian tribes or individual Indians;

5. To preclude the possession, acquisition or exercise of Water Rights Arising Under State Law by the Tribes or Allottees or members of the Tribes;

6. To limit in any way the right of the Parties or any other Person to litigate any issue or question not resolved by this Compact;

7. To authorize the taking of any water right that is vested under State, Tribal or Federal law;

8. To affect the ability of tribes or qualified individuals under Title 25, Sections 151.4 and 151.8, Code of Federal Regulations, to purchase land from willing sellers or the Secretary's ability to convert fee land to trust land status;

9. To create or deny substantive rights through headings or captions used in this Compact;

10. To address or prejudge how the Tribal Water Right may be treated or interpreted in any interstate or international water apportionment proceeding;

11. To constitute a waiver of sovereign immunity by the Tribes or the State except as expressly set forth in this Compact;

12. To constitute a waiver of sovereign immunity by the United States except as expressly set forth in 43 U.S.C. 666 or as otherwise provided by Congress;

13. Except as expressly provided herein and as may be required by Congress, to modify the obligations of any agency of the United States;

14. To limit or prohibit the Tribes, their members or Allottees, or to limit the United States in any capacity, from objecting in any general stream adjudication in the Montana Water Court to any claims to water rights on or off the Flathead Indian Reservation;

15. To prevent the Montana Water Court from adjudicating any properly filed claims or objections to the use of water within the Flathead Indian Reservation;

16. To limit or prohibit the Tribes, their members or Allottees, or the United States in any capacity, from filing any necessary action to prevent any Person or Party from interfering with the Tribal Water Right;

17. To affect or determine the applicability of any State, Tribal or Federal law not subject to this Compact, including, but not limited to environmental and public safety laws, on activities of the Tribes, their members or Allottees or the United States;

18. To prejudice or predetermine any right that Tribal members or Allottees have to obtain the use of a portion of the Tribal Water Right under the provisions of this Compact and the Law of Administration;

19. To affect the capacity of any Tribal member or Allottee to lease his or her land;

20. To empower the Water Management Board to assess a fee for the use of water;

21. To confer any jurisdiction on the Water Management Board over any water right whose place of use

is located outside the exterior boundaries of the Reservation;

22. To limit, diminish, modify, or enlarge any Party's adjudicatory or legislative jurisdiction except as expressly provided herein;

23. To constitute a waiver of an individual's right to object to the Compact during the Water Court decree process; or

24. To transfer, convert, or otherwise change the ownership or trust/fee status of land on the Reservation. Specifically, nothing in this Compact changes fee owned land to trust land or trust land to fee land, or in any way alters the ownership status of land within the exterior boundaries of the Flathead Indian Reservation.

C. Other Rights Reserved.

1. Nothing in this Compact is intended, nor shall be interpreted or applied, in any manner to alter, limit, or diminish the right of the Tribes to take all steps they deem necessary or prudent before any court or adjudicative forum, any legislature or legislative entity, or any State or Federal administrative agency, including but not limited to the Federal Energy Regulatory Commission, to protect any interests in Water Rights Arising Under State Law that the Tribes may acquire or seek to acquire and which are associated with the Federal Energy Regulatory Commission license for the Kerr Hydroelectric Project, FERC Project No. 5 (32 FERC # 61,070, July 17, 1985, as amended) or any other hydroelectric facility located on the Reservation subject to FERC jurisdiction.

2. The Parties expressly reserve all rights not granted, recognized or relinquished in this Compact, including but not limited to the right to the continued exercise by members of the Tribes of Tribal off-Reservation rights to hunt, fish, trap and gather food and other materials, as reserved in Article III of the Hellgate Treaty of July 16, 1855 (12 Stat. 975).

D. Obligations of the United States Contingent.

1. Notwithstanding any language contained herein and except as authorized under Federal law, the obligations of the United States under this Compact shall be contingent upon ratification and necessary authorization by Congress.

2. The expenditure or advance of any money or the performance of any work by the United States or the Tribes pursuant to this Compact which requires appropriation of money by Congress or by the Tribes is contingent on such appropriation being timely made.

3. The Tribes and the State recognize that this Compact has not been finally approved by the United States as of the date of execution by the Tribes or the State, and that ratification by the Tribes or by the State in

no manner limits or restricts the discretion of the United States in the negotiation of all matters related to this Compact.

E. Obligations of the State Contingent. The expenditure or advance of any money or the performance of any work by the State pursuant to this Compact that requires appropriation of money by the Montana Legislature or allotment of funds shall be contingent upon such appropriation or allotment.

ARTICLE VI - CONTRIBUTIONS TO SETTLEMENT

A. State Contribution to Settlement. The Parties agree that the State contribution to settlement shall be $55 million. The agreement to, expenditure, or advance of any State contribution which may require authorization and appropriation of money by the Montana Legislature or allotment of funds is contingent on such appropriation or allotment being made pursuant to Article V, Section 11(4) of the Montana Constitution. The Parties recognize that the amount and structure of the State funding is contingent on action of the Montana Legislature. If the Legislature appropriates funds in a manner inconsistent with the structure contemplated by the Parties in this section, the Parties agree to meet and confer to consider adjustments to the funding structure and priorities described in Articles IV.H.1.a and b above. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

1. The State Contribution to Settlement shall be allocated as follows:

a. $4 million for water measurement activities;

b. $4 million for improving on-farm efficiency;

c. $4 million for mitigating the loss of Stock Water deliveries from the FIIP;

d. $30 million to offset pumping costs associated with Compact implementation and related projects; and

e. $13 million to provide for aquatic and terrestrial habitat enhancement.

B. Federal Contribution to Settlement. The Parties agree that the Federal contribution to settlement shall be negotiated by the Tribes, the State, and the United States as part of the negotiations on the Federal legislation to ratify and effectuate the Compact.

ARTICLE VII - FINALITY

A. Ratification and Effectiveness of Compact.

1. The terms of the Compact may not be amended without the consent of all the Parties following the first ratification by any Party. After the Effective Date, no provision of the Compact shall be modified except as expressly provided in the Compact. Any amendment that is not expressly provided for in the Compact must be ratified in the same manner as the Compact; however, if the proposed amendment concerns non-monetary

matters and does not affect the water rights of the Tribes determined in this Compact or other property held in trust by the United States on behalf of the Tribes or Indians, the Secretary may ratify such amendment on behalf of the United States, as determined by Congress. The State and the Tribes will support provisions in the Federal legislation ratifying the Compact that delegates to the Secretary the authority to ratify such future amendments on behalf of the United States.

2. Notwithstanding any other provision in the Compact, the Tribes reserve the unilateral right to withdraw as a Party if:

a. Congress has not ratified this Compact and authorized appropriations for the Federal contribution to the settlement within four years from the date on which the ratification of the Compact by the Montana Legislature takes effect under State law. This is a continuing right until Congress ratifies the Compact;

b. Appropriations are not made in the manner contemplated by the Federal legislation ratifying this Compact;

c. The Parties do not reach agreement on the State contribution to settlement;

d. The State has not authorized appropriations for the State contribution to settlement within five years from the date the Compact is ratified by the United States; or

e. Appropriations are not made by the State in the manner contemplated by any agreement for contributions to settlement made pursuant to Article VI.A.

3. The Tribes may exercise their right to withdraw from the Compact under Article VII.A.2 by sending to the Governor of the State and to the Secretary by certified mail a resolution of the Tribal Council expressing the Tribes' intent to withdraw and specifying a reason for withdrawal and a withdrawal date not sooner than one hundred and twenty days from the date of the resolution. On the date designated in the resolution for Tribal withdrawal, the Compact shall become null and void without further action by any Party.

4. Notwithstanding any other provision in the Compact, the State reserves the unilateral right to withdraw as a Party to the Compact if:

a. Congress has not ratified this Compact within four years from the date on which the ratification of the Compact by the Montana Legislature takes effect under State law. This is a continuing right until Congress ratifies the Compact;

b. The Tribes have not ratified this Compact within five years from the date on which the ratification of the Compact by the Montana Legislature takes effect under State law;

c. Congress requires a State contribution to settlement that exceeds the contributions described in Article

VI.A; or

d. Congress does not authorize and appropriate the Federal share of funding agreed to pursuant to Article VI.B.

5. The State may exercise its right to withdraw under Article VII.A.4 by sending to the Chair of the Tribal Council and to the Secretary a letter delivered by certified mail from the Governor of the State expressing the State's intent to withdraw and specifying a reason for withdrawal and a withdrawal date not sooner than one hundred and twenty days from the date of the letter. On the date designated in the letter for State withdrawal, the Compact shall become null and void without further action by any Party.

B. Incorporation into Decrees.

1. Within one hundred eighty (180) days of the date this Compact is ratified by the Tribes, the State, and the United States, whichever is latest, the Tribes, the State, and/or the United States shall file, in the general stream adjudication initiated by the State, pursuant to the provisions of 85-2-702(3), MCA, a motion for entry of the proposed decree attached hereto as Appendix 38 as the decree of the water rights held by the United States in trust for the Tribes, Tribal members, and the Allottees of the Tribes as well as those Water Rights Arising Under State Law set forth in Article III.D.4.a.i and Article III.D.5, of which the Tribes become co-owners pursuant to this Compact, and such other provisions of the Compact as are related to the determination of these water rights and their administration. If the Montana Water Court does not approve the proposed decree submitted with the motion within three years following the filing of the motion, the Compact shall be voidable by written agreement of the State and the Tribes. If the Montana Water Court approves the proposed decree within three years, but the decree is subsequently set aside by the Montana Water Court or on appeal, the Compact shall be voidable by written agreement of the State and the Tribes. Any effect of the failure of approval or setting aside of the decree on the approval, ratification, and confirmation by the United States shall be as provided by Congress. The Parties understand and agree that the submission of the Compact to a State court or courts, as provided for in the Compact, is solely to comply with the provisions of 85-2-702(3), MCA, and does not expand the jurisdiction of the State court or expand in any manner the waiver of sovereign immunity of either the United States or the Tribes in the McCarran Amendment, 43 U.S.C. 666, or other provision of Federal law.

2. Consistent with 3-7-224, MCA, setting forth the jurisdiction of the chief water judge, for the purposes of 85-2-702(3), MCA, the review by the Montana Water Court shall be limited to the contents of Appendix 38, and may extend to other sections of the Compact only to the extent that they relate to the determination of water rights and their administration. The final decree shall consist of the contents of Appendix 38, and such other information

as may be required by 85-2-234, MCA. Nevertheless, pursuant to 85-2-702(3), MCA, the terms of the entire Compact must be included in the preliminary decree without alteration for the purpose of notice.

C. Disposition of State and Federal Suits.

1. On issuance of a final decree by the Montana Water Court or its successor, and the completion of any direct appeals therefrom, or on expiration of the time for filing any such appeal:

a. the United States, the Tribes, and the State shall execute and file joint motions pursuant to Rule 41(a), Fed.R.Civ.P., to dismiss without prejudice any and all claims of the Tribes, Tribal members, and Allottees and any and all claims made by the United States for the benefit of the Tribes, Tribal members, and Allottees in United States v. Abell, No. CIV-79-33-M (filed April 5, 1979). The case may only be resumed if either the State or the Tribes exercise the rights each holds under Article VII.A;

b. the Tribes and the State shall execute and file joint motions to dismiss without prejudice the case entitled Confederated Salish and Kootenai Tribes v. Bud Clinch, Director, Montana Department of Natural Resources and Conservation, and the Montana Department of Natural Resources and Conservation, Montana First Judicial Court, County of Lewis and Clark, Cause No. BDV-2001-253, Montana First Judicial District Court, Lewis and Clark County, Montana;

c. The United States, the Tribes, and the State shall execute and file joint motions pursuant to Rule 41(a), Mont.R.Civ.P., to dismiss without prejudice any and all claims of the Tribes, Tribal members, and Allottees and any and all claims made by the United States for the benefit of the Tribes, Tribal members, and Allottees that have been filed in the Montana Water Court as contemplated by Article VII.D.2. The case adjudicating those claims may only be resumed if either the State or the Tribes exercise the rights each holds under Article VII.A.2 and 4; and

d. The Decree shall be filed by the Parties as a consent decree in Abell, or in Federal court as a new proceeding after the dismissal of Abell conditional on agreement by the Parties to seek the necessary State, Tribal, and Federal ratification of the Compact, if it is finally determined in a judgment binding on the State that the State courts lack jurisdiction over, or that the State court proceedings are inadequate to adjudicate some or all of the water rights asserted in Abell.

D. Settlement of Water Rights Claims.

1. The water rights and other benefits confirmed to the Tribes in this Compact are in full and final satisfaction of and are intended to be in replacement of and substitution for all claims to water or to the use of water by the Tribes, Tribal members, and Allottees and the United States on behalf of the Tribes, Tribal members,

and Allottees existing on the Effective Date, except for any Appropriation Rights or Water Rights Arising Under State Law held by the Tribes, their members, or Allottees as of the Effective Date or acquired thereafter, which shall be satisfied pursuant to their own terms.

2. The Tribes and United States will file all of their claims to water on and off of the Flathead Indian Reservation on or before July 1, 2015, pursuant to 85-2-702(3), MCA. Upon filing, the Tribes and United States will request that the Montana Department of Natural Resources and Conservation stay any action on such claims pending the occurrence of the following events:

a. The passage of an Act of Congress ratifying the Compact and authorizing appropriations for monetary settlement to the Tribes;

b. Approval by the Tribes of the Compact and the Act described in Article VII.D.2.a.

c. Issuance by the Montana Water Court of a final water right decree or decrees incorporating the water rights quantified pursuant to this Compact; and

d. All portions of the final Water Court decree or decrees survive exhaustion of all avenues of appeal.

3. Upon occurrence of these events, the waiver and dismissal described in Article VII.C.1.c and VII.D.3 shall be accomplished.

4. In consideration of the water rights and other benefits confirmed to the Tribes, Tribal members, and Allottees in this Compact, and of performance by the State and the United States of all actions required by this Compact, and on entry of a final order issuing the decree of the Tribal Water Right held in trust by the United States as quantified in this Compact and displayed in Appendix 38 and occurrence of the events set forth in Article VII.D.2, the Tribes and the United States as trustee for the Tribes, Tribal members, and Allottees shall waive, release, and relinquish any and all claims to water rights or to the use of water, and shall dismiss any such claims filed pursuant to Article VII.D.2, existing on the Effective Date.

E. Settlement of Tribal Claims Against the United States. Waiver of claims against the United States by the Tribes, their members and Allottees shall be as provided by Congress.

F. Binding Effect. After the Effective Date and the entry of a final decree by the Montana Water Court of the water rights quantified by this Compact, or if necessary the Federal court in Abell, the Compact's terms shall be binding on:

1. The State and any Person using, claiming or in any manner asserting any right under the authority of the State to the use of water in the State; provided that, the validity of consent, ratification, or authorization by the State is to be determined by State law;

2. The Tribes and any Person using, claiming or in any manner asserting any right to the use of the Tribal Water Right, or any right arising under any doctrine of reserved or aboriginal water rights for the Tribes, Tribal members, and Allottees, or any rights arising under Tribal law; provided that, the validity of consent, ratification or authorization by the Tribes is to be determined by Tribal and, if applicable, Federal law; and

3. The United States and any Person using, claiming or in any manner asserting any right under the authority of the United States to the use of water in the State; provided that, the validity of consent, ratification or authorization by the United States is to be determined by Federal law.

ARTICLE VIII - LEGISLATION/DEFENSE OF COMPACT

A. State Legislation. The State and the Tribes agree to seek ratification of the Compact by the Montana Legislature and any additional State legislation necessary to effectuate the Compact.

B. Federal Legislation. The State and the Tribes agree to seek ratification of the Compact by Congress and any additional Federal legislation necessary to effectuate the Compact.

1. The State and the Tribes will support provisions in the Federal legislation ratifying this Compact that authorizes the United States District Court for the District of Montana in Missoula to review decisions of the Board and the MFWP authorized in the Compact; provided that, the sovereign immunity of the United States is not waived by such provision of the legislation.

2. The State and Tribes will support provisions in the Federal legislation ratifying this Compact that authorizes the Net Power Revenues distributions described in Article IV.H.3.

3. The State and the Tribes will support provisions in the Federal legislation ratifying this Compact that delegates to the Secretary the authority to ratify future amendments on behalf of the United States pursuant to Article VII.A.1.

C. Tribal Legislation. The State and the Tribes agree to seek ratification of the Compact by the Tribes and any Tribal legislation necessary to effectuate the Compact.

D. Defense of the Compact. The Parties agree to defend the Compact after its Effective Date from all challenges and attacks and in all proceedings pursuant to Article VII.B and C.

IN WITNESS WHEREOF the representatives of the Confederated Salish and Kootenai Tribes, the State of Montana, and the United States, have signed the Compact on the ____ day of ____, 201_.

NEW SECTION. **Section 2. Unitary administration and management ordinance.**

CHAPTER I

WATER RESOURCES CONSERVATION, DEVELOPMENT AND ADMINISTRATION

PART 1 - GENERAL PROVISIONS

1-1-101. Authority.

1. This Ordinance parallels legislation adopted by the Confederated Salish and Kootenai Tribes pursuant to Tribal approval of the Confederated Salish and Kootenai Tribes-Montana Compact and the Montana Water Use Act of 1973 to effectuate Unitary Administration and Management on the Flathead Indian Reservation.

2. This Ordinance and the parallel Tribal legislation are contingently effective; neither operates with the force and effect of law without the other. No modification by the Tribes or the State of Montana of these respective laws shall be effective within the exterior boundaries of the Reservation unless and until the other makes an analogous modification. No amendment of this Ordinance that may affect a use of the Tribal Water Right may be made without Secretarial approval.

3. Upon the Effective Date of the Compact, this Ordinance shall govern all water rights, whether derived from tribal, state or federal law, and shall control all aspects of water use, including all permitting of new uses, changes of existing uses, enforcement of water right calls and all aspects of enforcement within the exterior boundaries of the Flathead Indian Reservation. Any provision of Title 85, MCA, that is inconsistent with this Law of Administration is not applicable within the Reservation.

1-1-102. Reserved.

1-1-103. Reserved.

1-1-104. Definitions. Unless otherwise defined herein, capitalized terms used in this Ordinance shall have the meaning set forth in the Compact.

1. "Allottee" or "Allottees" means an owner of an interest in a tract of land held in trust by the United States which was allotted pursuant to the Act of April 23, 1904, 33 Stat. 302, as amended, or the Act of February 25, 1920, 41 Stat. 452, as amended.

2. "Appropriate" means to divert, impound, maintain an instream, inlake, inwetland or impoundment use, or withdraw a quantity of water for a beneficial use on the Flathead Indian Reservation under color of law.

3. "Appropriation" means the diversion, impoundment, maintenance of an instream, lake, Wetland, or impoundment use, or the withdrawal of a quantity of water for a Beneficial Use on the Flathead Indian Reservation under color of law.

4. "Appropriation Right" means a right to Appropriate water issued by the Water Management Board pursuant to the terms of the Compact and this Ordinance.

5. "Aquifer Injection" means the subsurface discharge of fluids into the ground by means of an Injection Well.

6. "Appropriator" means a Person who Appropriates water.

7. "Beneficial Use" means a consumptive or non-consumptive use of water for the benefit of the Appropriator, other Persons, the Tribes, one or more Tribal members, or the general public, including but not limited to agricultural, stock water, domestic, fish and wildlife, cultural and religious practices, industrial, Instream Flow, irrigation, mining, Mitigation Water, municipal, power, recreational uses, and Wetlands purposes.

8. "Business" means a building or site where commercial work is carried on, including but not limited to a factory, store, or office.

9. "Change in Use" means an authorized change in the point of diversion, the place of use, the period of use, the purpose of use, or the place of storage of an Appropriation Right issued by the Water Management Board under the Compact and this Ordinance, or of an Existing Use. A changed water right retains the original priority date of that right.

10. "Compact" means that water rights settlement entered into by the Confederated Salish and Kootenai Tribes, the State of Montana, and the United States.

11. "Complainant" means one who files a Complaint.

12. "Complaint" means a written assertion of injury submitted to the Engineer pursuant to Section 3-1-102 of this Ordinance.

13. "Consumptive Use" means the amount of water used for a beneficial purpose, such as water transpired by growing vegetation, evaporated from soils or water surfaces, or incorporated into products, that does not return to the Groundwater or surface water source.

14. "Designee" means an individual selected by the Engineer to exercise, in regard to a particular application or objection, those powers assigned to the Engineer under Chapter II of this Ordinance. Any Staff is eligible to be selected as a Designee provided that he or she has not previously worked on the particular application or objection at issue.

15. "Developed Spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of Groundwater, from which Groundwater is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

16. "Development" means contiguous or closely grouped parcels of land under the same or affiliated

ownership, including, but not limited to, housing subdivisions or any combination of business and residential units.

17. "DNRC" means the Montana Department of Natural Resources and Conservation, or any successor agency.

18. "Domestic Allowance" means an entitlement to use water issued to households and small businesses pursuant to the provisions of Section 2-2-117 of this Ordinance; Domestic Allowances include Individual Domestic Allowances, Shared Domestic Allowances, and Development Domestic Allowances.

19. "Domestic Use" means those water uses common to a household, including washing, drinking, bathing, waste disposal, cooling and heating, domestic animals, and garden and landscape irrigation. Domestic Use does not include the filling of ponds, pits, pit-dams or reservoirs.

20. "Effective Date" means the date on which the Compact is finally approved by the Tribes, by the State, and by the United States, and on which the Law of Administration has been enacted and taken effect as the law of the State and the Tribes, whichever date is latest.

21. "Emergency" means a situation that demands unusual or immediate action to prevent imminent injury to life, property, or the environment.

22. "Enclosed Storage" means a storage container fully enclosed to include a cistern or tank.

23. "Existing Use" means a use of water under color of Tribal, State or Federal law in existence as of the Effective Date, including uses in existence on that date that are eligible for either of the registration processes set forth in Sections 2-1-101 through 2-1-108 of this Ordinance; provided that any portion of a Water Right Arising Under State Law within the Reservation that is, at any point after the date the ratification of the Compact by the Montana Legislature takes effect under State law, voluntarily relinquished or is legally determined to be abandoned, relinquished, or have otherwise ceased to exist, shall be stricken from the relevant basin decree as a Water Right Arising Under State Law and be entitled to no further protection as such a right or as an Existing Use.

24. "Flathead Indian Irrigation Project" or "FIIP" means the irrigation project developed by the United States to irrigate lands within the Reservation pursuant to the Act of April 23, 1904, Public Law 58-159, 33 Stat. 302 (1904), and the Act of May 29, 1908, Public Law 60-156, 35 Stat. 441 (1908), and includes, but is not limited to, all lands, reservoirs, easements, rights-of-way, canals, ditches, laterals, or any other FIIP facilities (whether situated on or off the Reservation), head gates, pipelines, pumps, buildings, heavy equipment, vehicles, supplies, records or copies of records and all other physical, tangible objects, whether of real or personal property, used in the management and operation of the FIIP.

25. "FIIP Influence Area" means the lands influenced by the operations of the FIIP as identified on the map attached to the Compact as Appendix 2.

26. "Flathead Indian Reservation" or "Reservation" means all land within the exterior boundaries of the Indian Reservation established under the July 16, 1855 Treaty of Hellgate (12 Stat. 975), notwithstanding the issuance of any patent, and including rights-of-way running through the Reservation.

27. "Flathead System Compact Water" means that portion of the Tribal Water Right consisting of 229,383 acre feet per year that the Tribes may withdraw from the Flathead River or Flathead Lake, which includes up to 90,000 acre feet per year stored in Hungry Horse Reservoir, with a maximum total volume consumed of 128,158 acre feet per year.

28. "Groundwater" means any water that is beneath the surface of the earth.

29. "Groundwater Management Area" means an area designated and managed under Section 1-1-109 of this Ordinance.

30. "Heating/Cooling Exchange Well" means a Well for the purpose and with the attributes set forth in Section 2-2-119(1) of this Ordinance.

31. "Home" means a house, apartment, or other shelter that is a permanent or temporary residence of a Person, family, or household.

32. "Illegal" or "Illegally" means, as it pertains to the use of water, to Appropriate water not pursuant to an Appropriation Right or Existing Use.

33. "Injection Well" means a Well utilized for injecting fluids or gases into geologic materials. Open pits, ponds, or excavations are not considered Injection Wells.

34. "Instream Flow" means a stream flow retained in a watercourse to benefit the aquatic environment. Instream Flow may include Natural Flow or streamflow affected by regulation, diversion, or other modification. A water right for Instream Flow purposes is quantified for a stream reach and measured for enforcement purposes at a specified point.

35. "Livestock" means cattle, bison, sheep, swine, horses, mules, goats, or other animals specifically raised and used for food or fiber or as a beast of burden.

36. "Mitigation" means the reallocation of surface water or Groundwater through a Change in Use or other means to offset adverse effect resulting from Net Depletion by any proposed new Appropriation.

37. "Mitigation Plan" means a plan as developed by an applicant to provide Mitigation.

38. "NRD" means the Confederated Salish and Kootenai Tribes' Natural Resources Department.

39. "Natural Wetland" means a Wetland area that is maintained with a natural surface water source, natural Groundwater source or a combination of natural surface water and natural Groundwater without any artificial means of diversion, impoundment, withdrawal, excavation, or other artificial means of control.

40. "Net Depletion" means the calculated volume, rate, timing, and location of reductions to a water source resulting from a proposed new Appropriation that are not offset by the corresponding accretions to that source caused by the proposed new Appropriation.

41. "Non-consumptive Use" means any beneficial use of water that does not meet the definition of consumptive use.

42. "Other Instream Flows" means the Tribal instream flow water rights for stream reaches described in Article III.C.1.d.iii of the Compact.

43. "Office of the Engineer" means the Engineer and Staff, acting in their official capacities.

44. "Person" means an individual or any other entity, public or private, including the Tribes, the State, and the United States, and all officers, agents and departments of each sovereign.

45. "Pits, Pit-dams, Constructed Ponds, or Reservoirs" refer to bodies of water that are created by man-made means and which store water for beneficial use.

46. "Project Manager" means the person or team of persons hired by the Project Operator to operate and manage the FIIP in accordance with its direction, this and other applicable agreements, and applicable law, including the Compact.

47. "Project Operator" means that entity with the legal authority and responsibility to operate the Flathead Indian Irrigation Project.

48. "Public Water Supply System" means a system for the provision of water for human consumption that has at least 15 service connections or that regularly serves at least 25 Persons daily for any 60 or more days in a calendar year.

49. "Publish" or "Publication" means, unless otherwise designated, the printing of an announcement of document availability, or the text of the document itself, in a newspaper of general circulation on the Reservation and in the Tribal newspaper and posting on the Water Management Board's website.

50. "Redundant Well" means a Well to provide a backup source of water for a Public Water Supply System.

51. "Restored Natural Wetland" means a Wetland area that, upon restoration, shall be maintained with a natural surface water source, natural Groundwater source, or a combination of natural surface water and natural

Groundwater without any artificial means of diversion, impoundment, withdrawal, excavation, or other artificial means of control.

52. "Secretary" means the Secretary of the United States Department of the Interior or the Secretary's duly assigned representative.

53. "Shall" means a mandatory and not a discretionary act.

54. "Shared Well" means a single Well that is physically manifold to multiple homes and/or businesses and is cooperatively used pursuant to a Shared Well Agreement.

55. "Shared Well Agreement" means a legally binding document that stipulates the manner in which a Shared Well is jointly used between or among all Homes or Businesses connected to the well; to be valid, it must be signed by representatives for each Person having a possessory interest in each individual Home or Business connected to a Shared Well.

56. "Spring" means a perennial hydrologic occurrence of water involving the natural flow of water originating from beneath the land surface and arising to the surface of the ground.

57. "Staff" means the employees, contractors and others assigned to or engaged by the Board or the Engineer to assist or facilitate the Engineer in carrying out the duties assigned to the Engineer by the Compact and this Ordinance, and by the Board pursuant to the same.

58. "Stock Tank" means a 30 to 1500 gallon tank used to provide drinking water for Livestock that is equipped with a water level regulator that shuts off supply to keep the Stock Tank from overflowing.

59. "Substitute Well" means a Well that replaces an existing Well which is to be abandoned.

60. "Temporary Emergency Appropriation" means the temporary beneficial use of water necessary to protect lives, property, or the environment, by reason of fire, storm, earthquake or other disaster, or unforeseen combination of circumstances which call for immediate action. An appropriation made necessary due to drought conditions is not a temporary emergency appropriation.

61. "Temporary Groundwater Management Area" means an area established pursuant to Section 1-1-109(10) of this Ordinance.

62. "Tribal Member" means a Person who is lawfully enrolled by and whose name appears on the official enrollment list of the Confederated Salish and Kootenai Tribes.

63. "Tribal Water Right" means the water rights of the Confederated Salish and Kootenai Tribes, including any Tribal member or Allottee, that arise under Federal law, as set forth in Article III.A, Article III.C.1.a through j, Article III.C.1.k.i, Article III.C.1.l.i, Article III.D.1 through 3, and Article III.D.7 and 8 of the Compact. The term

"Tribal Water Right" also includes those rights identified in Article III.H of the Compact that are appurtenant to lands taken into trust by the United States on behalf of the Tribes.

64. "Tribes" means the Confederated Salish and Kootenai Tribes of the Flathead Reservation, and all officers, agencies, and departments thereof.

65. "Waste" or "Wasting" means the unreasonable loss of water resulting from the design, construction, operation or maintenance of a water diversion, storage or distribution facility, Well, Developed Spring, or the application of water to anything but a beneficial use.

66. "Water Engineer" or "Engineer" means the Person satisfying the criteria in Section 1-2-109 of this Ordinance employed by the Water Management Board pursuant to Article IV.I.5.c of the Compact to exercise the powers and duties of the Water Engineer as set forth in the Compact and this Ordinance.

67. "Water Management Board" or "Board" means the board created by Article IV.I of the Compact and vested with the responsibilities set forth in the Compact and in Tribal and State law for the administration of water within the Reservation.

68. "Water Rights Arising Under State Law" means those valid water rights Arising Under State Law existing as of the Effective Date and not subsequently relinquished or abandoned, as those rights are: decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permitted by the DNRC; exempted from filing in the Montana general stream adjudication pursuant to 85-2-222, MCA; or excepted from the permitting process pursuant to 85-2-306, MCA.

69. "Well" means any artificial opening or excavation in the ground, however made, by which Groundwater is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

70. "Well Log Report" means DNRC Form No. 603 (see ARM 36.12.102), or any successor reporting form and requirement promulgated in State law.

71. "Well Shaft Casing" means an impervious durable pipe placed in a well or Developed Spring to prevent the walls from caving, to seal off surface drainage, or undesirable water, gas, or other fluids to prevent their entering the well, and to prevent the Waste of Groundwater.

72. "Wetland" means an area that is inundated or saturated by surface water or Groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

73. "Wetland Quantified Appropriation Right" means an Appropriation Right issued for a Wetlands purpose that utilizes any man-made diversions, impoundment, withdrawals, excavations, or other artificial means for the purposes of appropriation for either all or a portion of a Wetland.

74. "Wetland Protective Appropriation Right" means an Appropriation Right issued for either a Natural Wetland or Restored Natural Wetland.

75. "Works" means all property, real or personal, necessary or convenient to the appropriation, conservation, storage, diversion, distribution, development, screening and utilization of water.

1-1-105. Measurement of Water. Upon the effective date of this Ordinance, legal standards of measurement of water within the Flathead Reservation shall be as follows:

1. Flow rates shall be measured in cubic feet per second, unless otherwise provided herein. Where documentary evidence of an existing use is expressed in gallons per minute, 448.8 gallons per minute shall be considered equivalent to a flow of one cubic foot per second. Where documentary evidence of an existing use is expressed in statutory or miner's inches, 40 statutory or miner's inches shall be considered equivalent to a flow of one cubic foot per second.

2. Volumes of water shall be measured in acre-feet, unless otherwise provided herein. One acre-foot shall be considered equivalent to a volume of 43,560 cubic feet. One cubic foot shall be considered equivalent to a volume of 7.48 gallons.

1-1-106. Measurement of Time. Whenever in this Ordinance an action is required to be performed within a certain number of days, the time for completion of the act shall be measured in calendar days unless the last day falls on a Friday, Saturday, Sunday, or Tribal, State or Federal legal holiday, in which case the time for performance is extended to the next subsequent business weekday.

1-1-107. Appropriation Rights Allowed.

1. The following Appropriation Rights or Changes in Use may be authorized by the Board pursuant to the Compact and this Ordinance:

a. Appropriation Rights for Groundwater appropriations for Redundant or Substitute Wells as set forth in Section 2-2-115 of this Ordinance.

b. Appropriation Rights for Stock Water Allowances as set forth in Section 2-2-116 of this Ordinance.

c. Appropriation Rights for Domestic Allowances as set forth in Section 2-2-117 of this Ordinance.

d. Appropriation Rights for uses of Flathead System Compact Water as set forth in Section 2-2-118 of this Ordinance.

e. Appropriation Rights for non-consumptive geothermal heating or cooling exchange Wells as set forth in Section 2-2-119 of this Ordinance.

f. Appropriation Rights for Temporary Emergency Appropriations as set forth in Section 2-2-120 of this Ordinance.

g. Appropriation Rights or Change in Use authorizations for Wetlands as set forth in Sections 2-2-123 and 2-2-124 of this Ordinance.

h. Appropriation Rights for Non-consumptive Uses, including, but not limited to, hydropower generation and not including flow-through ponds.

i. Appropriation Rights for which adverse effects to existing Appropriators are offset by Mitigation.

j. Changes in Use of all Appropriation Rights or Existing Uses except for those Appropriation Rights authorized under subsections (1)(a), (1)(b), (1)(c), (1)(e), (1)(f), (1)(k), or (1)(l) of this Section or those for Existing Uses exempt from the permitting requirements of 85-2-306, MCA, or from the claim filing requirements of 85-2-221, MCA, as set forth in 85-2-222, MCA; provided that a use authorized under subsection (1)(h) may not be changed from a Non-consumptive Use to a consumptive use.

k. Appropriation Rights to Appropriate surface water to conduct response actions related to natural resource restoration required for:

i. remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.;

ii. aquatic resource activities carried out in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387; or

iii. remedial actions taken pursuant to the Remedial Action Upon Release of Hazardous Substance Act, Title 75, chapter 10, part 7, MCA.

No Appropriation Rights issued pursuant to this subsection may be used for dilution.

l. Appropriation Rights for uses of surface water for or by a municipality or regional distribution system.

m. Appropriation Rights for new uses of the Tribal Water Right by the Tribes, Tribal Members, or Allottees, provided that any such new uses be sourced from:

i. Flathead System Compact Water; or

ii. another source, provided that any adverse effects to existing Appropriators caused by the Net Depletion of the new Appropriation Right must be offset by Mitigation pursuant to Section 1-1-112 of this Ordinance.

2. Other than those Appropriation Rights set forth in subsection (1) of this Section, the Board may not grant an Appropriation Right or other authorization to Appropriate surface water or Groundwater within the exterior boundaries of the Flathead Indian Reservation.

1-1-108. Reservation Water Rights Database. The Board shall cause all Appropriation Rights and Changes in Use authorized by the Board, including those uses registered pursuant to the provisions of Sections 2-1-101 through 2-1-107 of this Ordinance, to be entered into the DNRC water rights database in a format agreed to by the Board and the DNRC.

1-1-109. Groundwater Management Areas. The Board may designate, modify, or repeal either permanent or Temporary Groundwater Management Areas as provided in this part.

1. Each designation of a Groundwater Management Area shall identify the need for the special management, the boundaries of the area, the water resources targeted for special management, and the specific restrictions that will apply in the Groundwater Management Area.

2. The designation, modification, or repeal of a Groundwater Management Area may be initiated by submission of a correct and complete petition by:

a. the Tribes, the State, or the United States;

b. a local public health agency;

c. a municipality, county, or conservation district; or

d. at least one-third of the water rights holders in a proposed Groundwater Management Area.

3. A correct and complete petition shall:

a. be in a form prescribed by the Board;

b. contain facts and analysis prepared by a hydrologist, hydrogeologist, qualified scientist, or a qualified licensed professional engineer demonstrating the existence of one or more of the criteria set forth in subsection (8) are met; and

c. describe proposed measures, if any, needed to mitigate effects of the criteria identified in subsection (8) of this Section; and that are alleged in the petition or describe the rationale as to why a Groundwater Management Area should be repealed or modified.

4. Upon receipt of a completed petition complying with subsection (3) of this Section, the Office of the Engineer shall date stamp the petition.

5. Office of the Engineer review:

a. within 180 days of the date of receipt of the petition pursuant to subsection (4) of this Section, the

Office of the Engineer shall:

i. determine in writing that the petition is correct and complete; or

ii. notify the petitioner of any defects in a petition, with an explanation in writing of the defect(s).

b. any petition that is returned pursuant to subsection (5)(a)(ii) of this Section and not corrected within 90 days from the date of return shall be deemed terminated.

c. if the Office of the Engineer does not notify the petitioner pursuant to subsection (5)(a) of this Section, the petition shall be treated as correct and complete.

6. Board review:

a. within 60 days after a petition is determined to be correct and complete, the Board shall:

i. deny the petition in writing in whole or part, stating the reasons for denial;

ii. inform the petitioner in writing that the Board will study the information presented in the petition for a period not to exceed 90 days before denying or proceeding with the petition; or

iii. publish notice of the Board's consideration of action concerning a permanent or Temporary Groundwater Management Area pursuant to subsection (8) of this Section.

b. failure of the Board to act under subsection (6)(a) of this Section shall be deemed a denial of the petition.

7. If the Board determines that a correct and complete petition contains sufficient information to warrant the Board granting the petition, the Board shall proceed to hear the petition. The Board shall provide public notice of the hearing by:

a. publishing a notice at least once each week for 3 successive weeks, with the first notice not less than 30 days before the date of the hearing in a newspaper of general circulation on the Reservation;

b. serving by mail a copy of the notice, not less than 30 days before the hearing, upon each Person or public agency known from an examination of the records of the Board to be a water right holder within the proposed or existing Groundwater Management Area;

c. serving by mail a copy of the notice upon any other Person, including Tribal, State or federal agencies, that the Board knows to be interested in or affected by the proposed designation, modification, or repeal of a Groundwater Management Area.

d. the notice under subsections (7)(a) through (7)(c) must include a summary of the basis for the proposed action. Publication and mailing of the notice as prescribed in this Section, when completed, is considered to be sufficient notice of the hearing to all interested parties.

e. the Board shall make available to the public on its website a complete copy of the petition or request to designate, modify, or repeal either permanent or Temporary Groundwater Management Areas.

8. The Board may designate a permanent Groundwater Management Area if it finds by a preponderance of the evidence that any of the following criteria have been met:

a. current or projected reductions of recharge to the aquifer or aquifers within the boundaries of the proposed permanent Groundwater Management Area will cause Groundwater levels to decline to the extent that water rights holders cannot reasonably exercise their water rights;

b. current or projected Groundwater withdrawals from the aquifer or aquifers in the boundaries of the proposed Groundwater Management Area have reduced or will reduce Groundwater levels or surface water availability necessary for water rights holders to reasonably exercise their water rights;

c. current or projected Groundwater withdrawals from the aquifer or aquifers in the proposed permanent Groundwater Management Area have impaired or will impair Groundwater quality necessary for water right holders to reasonably exercise their water rights based on relevant water quality standards;

d. Groundwater within the proposed permanent Groundwater Management Area is not suitable for any beneficial use; or

e. public health, safety, or welfare is or will become at risk.

9. Monitoring and studies:

a. if the Board finds that sufficient facts, including monitoring information, are not available to designate a permanent Groundwater Management Area, the Board may designate a Temporary Groundwater Management Area to allow studies to obtain the facts needed to:

i. correct deficiencies that the Board identifies in a petition for a permanent Groundwater Management Area;

ii. determine the extent to which the criteria identified in subsection (8) are met or not met;

iii. determine appropriate control measures to implement to designate a permanent Groundwater Management Area.

b. the Board shall set the length of time that the Temporary Groundwater Management Area shall be in effect. The term of a Temporary Groundwater Management Area may be extended by the Board, but may not exceed a total of 6 years.

c. the Board shall determine the responsibility for funding the costs associated with subsection (9)(a). Any person on whom a funding responsibility is placed by the Board pursuant to this subsection may appeal that

determination to a Court of Competent Jurisdiction, which shall review the determination for an abuse of discretion.

d. prior to designating a Temporary Groundwater Management Area, the Board shall provide notice and the opportunity for public hearing pursuant to the notice provisions of subsection (7) of this Section.

e. a Temporary Groundwater Management Area designation is for the purpose of monitoring and study and shall not include the control provisions set forth in subsection (10) of this Section, other than measurement, water quality testing, and reporting.

f. prior to expiration of a Temporary Groundwater Management Area, and subject to the limitations of subsection (9)(b) of this Section, the Board may amend or repeal the establishment of the Temporary Groundwater Management Area, or may designate a permanent Groundwater Management Area under this Section.

10. A permanent Groundwater Management Area may include, but is not limited to, one or more of the following provisions:

a. closing the permanent Groundwater Management Area to further appropriation of surface water and/or Groundwater;

b. restricting the development of future surface water and/or Groundwater appropriations within the permanent Groundwater Management Area;

c. prohibiting or restricting the issuance of Stock Water Allowances pursuant to Section 2-2-116 of this Ordinance;

d. prohibiting or restricting the issuance of Domestic Allowances pursuant to Section 2-2-117 of this Ordinance;

e. requiring measurement and reporting of future surface water or Groundwater appropriations within the permanent Groundwater Management Area;

f. requiring water conservation measures within the permanent Groundwater Management Area;

g. requiring mitigation of Groundwater withdrawals within the permanent Groundwater Management Area;

h. reporting data to the Board within the permanent Groundwater Management Area; and

i. other provisions that the Board determines are appropriate and adopts.

11. The Board, upon petition, may modify or repeal a Groundwater Management Area. Any petition seeking the modification or repeal of a permanent Groundwater Management Area must demonstrate by a preponderance of the evidence that current or projected recharge to the aquifer or aquifers or changes to current

or projected Groundwater withdrawals from the aquifer or aquifers in the boundaries of an existing Groundwater Management Area justify modification or repeal of that Groundwater Management Area.

12. Appeal from any final decision of the Board concerning the designation, modification or repeal of any permanent Groundwater Management Area pursuant to this Section shall be as set forth in Section 2-2-112 of this Ordinance.

13. If the Board determines that it is appropriate for a Groundwater Management Area identified pursuant to this section to extend to an area adjacent to but outside the boundaries of the Reservation, the Board, through the Office of the Engineer, may petition the DNRC, pursuant to 85-2-506(2)(c)(i), MCA, to designate a Controlled Groundwater Area in that adjacent area. Designation or modification by the DNRC of a Controlled Groundwater Area in any such adjacent area shall be governed by the procedures set forth in 85-2-506, MCA.

1-1-110. Standards for Applications for Appropriation Rights and Changes in Use. For any application for an Appropriation Right or Change in Use that is not one of the categories of Appropriation Right identified in Sections 1-1-112(1) or 2-2-118 of this Ordinance, in addition to whatever information is required by specific provisions of the Ordinance, all applications for Appropriation Rights and Changes in Use must include:

1. An identification of the proposed beneficial use.

2. An identification of the source of water supply.

3. A project description, including an identification of any water right(s) to be changed to a new use, if applicable.

4. A legal description of the point of diversion and the place of use.

5. The monthly volume(s) and flow rate(s) of the water supply to be diverted, withdrawn, or impounded, and the monthly volume(s) to be consumed; however the Office of the Engineer may require a more frequent quantification time step.

6. The monthly historic diverted, withdrawn, or impounded volume(s) and flow rate(s) and the historically consumed volume(s) of the water right(s) to be changed to a new use, if applicable; however, the Office of the Engineer may require a more frequent quantification time step.

7. The calculations, references and methodologies used to determine the volume(s) and flow rate(s) in subsections (5) and (6) above.

8. Identification of physical water availability and existing legal demands on the source of supply of water.

9. Evidence that the proposed means of diversion, construction, and operation of the appropriation Works are adequate.

10. Evidence of possessory interest or the written consent of the person with the possessory interest in the property where the water is to be put to beneficial use, diverted, conveyed, impounded, stored, transported, withdrawn, used, and distributed.

11. Information showing that the water quantity or quality of an Appropriator will not be adversely affected, if applicable.

12. A United States Geological Survey (USGS) quadrangle map or United States Department of Agriculture (USDA) aerial photo must be included with the application.

a. The following items shall be clearly identified on the map:

(1) North arrow;

(2) Scale bar;

(3) Section corners and numbers;

(4) Township and range numbers;

(5) Property lines and ownership;

(6) Source(s);

(7) Point(s) of diversion;

(8) Means of conveyance;

(9) Place(s) of use;

(10) Place(s) of storage, if applicable:

(11) Surface water features;

(12) Measurement and instrument locations associated with the application; and

(13) The place(s) of use of all associated and supplemental water rights.

b. If the application is for a Change in Use, the site map shall also show the historic point(s) of diversion, place(s) of use, and place(s) of storage, as applicable.

c. Additional maps shall be submitted if the information on one map cannot convey the required information clearly and shall be of the same scale so the maps can be overlain.

1-1-111. Groundwater Diversion Standards

1. Wells:

a. Persons that drill, make, or construct Wells, including monitoring Wells, on the Reservation shall comply with Title 37 Chapter 43, MCA, and ARM 36 Chapter 21 licensing, conduct, and regulatory requirements, or any successor provisions promulgated in State law.

b. All Well construction on the Reservation shall meet the standards set forth in ARM 36 Chapter 21, or any successor provisions promulgated in State law.

c. Construction and operations of all Wells must comply with all applicable federal, State, Tribal, and local environmental regulations.

2. Developed Springs:

a. All Developed Spring collection components, including but not limited to infiltration galleries, infiltration basins, and French drains, shall be installed and buried under the surface of the ground.

b. All means of storage and conveyance, including but not limited to supply pipes, cisterns, and pump housings, shall be sealed and made impervious to water and designed in a manner that protects the source from backflow and surface contamination.

c. Open pits, ponds, or excavations shall not be used as a means of diversion for Developed Springs.

d. Construction and operation of all Developed Springs must comply with all applicable federal, State, Tribal, and local environmental regulations.

3. Aquifer Injection and Injection Wells are not allowed except when used exclusively for Heating/Cooling Exchange Wells.

1-1-112. Mitigation

1. Unless any provision of a Groundwater Management Area established pursuant to Section 1-1-109 of this Ordinance specifically requires Mitigation for any of the following categories of Appropriation Rights, Mitigation is not required for Appropriation of:

a. Redundant or Substitute Wells pursuant to Section 2-2-115 of this Ordinance;

b. Stock Water Allowances pursuant to Section 2-2-116 of this Ordinance;

c. Domestic Allowances pursuant to Section 2-2-117 of this Ordinance;

d. Heating/Cooling Exchange Wells pursuant Section to 2-2-119 of this Ordinance;

e. Temporary Emergency Appropriations pursuant to Section 2-2-120 of this Ordinance; or

f. Short-term uses of an Appropriation Right pursuant to Sections 2-2-121 and 2-2-122 of this Ordinance.

2. Mitigation is not required for Appropriation of Flathead System Compact Water Pursuant to 2-2-118 of this Ordinance.

3. Any Appropriation Right that results in a Net Depletion of either surface water or Groundwater shall offset the entire Net Depletion that results in adverse effect to any Appropriator through the use of Mitigation pursuant to a Mitigation Plan.

4. An adverse effect to a Wetland Protective Appropriation Right recognized in Article III.C.1.f of the Compact or a Wetland Protective Appropriation Right issued pursuant to Section 2-2-123 of this Ordinance that requires Mitigation shall include, but is not limited to, a water supply alteration that would cause:

a. reductions of the Wetland boundary in excess of the normal range of variability in water; or

b. unnatural Wetland plant community change.

5. A Mitigation Plan must include:

a. a plan of use for the proposed Appropriation Right for which the Mitigation Plan is required;

b. an identification of the location, volume, and timing (by monthly or more frequent time step as determined by the Engineer) of the adverse effect to be mitigated;

c. if necessary, evidence that an application for a Change in Use has been submitted;

d. the amount of water reallocated through exchange or substitution that is required to mitigate the adverse effect;

e. evidence that the water for Mitigation is legally and physically available;

f. evidence of how the Mitigation Plan will offset the Net Depletion in a manner that will offset any adverse effect to any Appropriator; and

g. evidence that the necessary water quality permits, if any, have been applied for pursuant to the Tribal Water Quality Management Ordinance.

6. No applicant for an Appropriation Right shall be required to provide more Mitigation than the quantity needed to offset the adverse effects of that proposed new Appropriation Right on any Appropriator.

7. Compliance with a Mitigation Plan and proof of any water quality permit(s) issued pursuant to the Tribal Water Quality Management Ordinance, if applicable, must be included as a written condition on any Appropriation Right or Change in Use authorization that is conditioned on Mitigation.

8. If compliance with a Mitigation Plan or any applicable water quality permit(s) issued pursuant to the Tribal Water Quality Management Ordinance ceases or terminates, the holder of the Appropriation Right conditioned on compliance with the Mitigation Plan shall immediately notify the Office of the Engineer, and use of the Appropriation Right shall be suspended immediately until a new Mitigation Plan is approved and implemented pursuant to this Ordinance.

1-1-113. Codification, Severability and Defense.

1. The provisions of this Ordinance are severable, and a finding of invalidity of one or more provisions hereof shall not affect the validity of the remaining provisions.

2. This Ordinance is intended to function in conjunction with the legislation adopted by the Confederated Salish and Kootenai Tribes pursuant to Tribal approval of the Confederated Salish and Kootenai Tribes-Montana Compact and the Montana Water Use Act of 1973 to effectuate Unitary administration and Management on the Flathead Indian Reservation. Should those portions of the parallel Tribal Legislation be amended by subsequent legislation without contemporaneous and materially identical State amendment to this Ordinance, this Ordinance shall govern the use of waters within the Reservation, irrespective of the amended provisions of Tribal law, until such time as the laws of the Tribes and the State are rendered mutually consistent. Similarly, should this Ordinance be amended without contemporaneous and materially identical amendment of the provisions adopted into Tribal law, those pre-existing provisions of Tribal law shall govern the use of waters within the Reservation, irrespective of the amended provisions, until such time as the laws of the Tribes and the State are rendered mutually consistent.

3. Any amendment to this Ordinance that is approved by the Tribes, the State and the Secretary is pursuant to, and shall not be deemed a modification of, the Compact.

4. The State adopts this Ordinance only after concluding its provisions are lawful. Should the legality of the Ordinance, or parallel Tribal legislation, or any provision thereof be challenged in any court, the parties shall use their best effort jointly to defend the enforceability of the Ordinance, the parallel Tribal legislation and each of the respective provisions.

1-1-114. Effective Date. This Ordinance and each provision hereof according to its terms shall take on the Effective Date of the Compact.

PART 2 - UNITARY ADMINISTRATION AND MANAGEMENT

1-2-101. Purpose. The purpose of this Part is to establish the processes applicable to all surface and Groundwater use within the exterior boundaries of the Flathead Indian Reservation.

1-2-102. Establishment and Composition of the Water Management Board. Pursuant to Article IV.I of the Compact, the Water Management Board is established.

1-2-103. Qualifications of Board Members. As set forth in Article IV.I.2.f of the Compact:

1. A Board member shall be over 18 years of age.

2. A Board member shall be a Reservation resident, which means, for the purposes of filling a position on the Board, an individual who:

a. does business within Flathead Indian Reservation boundaries,

b. is domiciled within Flathead Indian Reservation boundaries, or

c. owns and maintains a seasonal residence within Flathead Indian Reservation boundaries.

3. No elected official of the State of Montana, or any political subdivision thereof, or of the United States, or of the Tribes is eligible for nomination to the Board while holding such elective office. However, a nominee for Board membership shall not be disqualified by reason of the fact that he or she is an employee or contractor of the State of Montana or any political subdivision thereof, or of the Tribes, or of the United States.

4. A Board member shall have education and experience in one or more of the following fields: natural resources management, public administration, agriculture, engineering, commerce or finance, hydrology, biological sciences, water law or water policy.

5. No Board member may vote on any application or appeal that the member participated in personally and substantially in any non-Board capacity.

1-2-104. Public Meetings and Records. As set forth in Article IV.I.7 of the Compact:

1. Notwithstanding any other provisions of law, the Board is a public agency for purposes of the applicability of State and Tribal right to know laws.

2. All regular and special meetings of the Board, including all hearings conducted by the Office of the Engineer or the Board pursuant to the provisions of Chapter 2 Part 2, and Chapter 3 of this Ordinance, shall be open to the observation of the general public pursuant to State and Tribal open meeting laws. Where there is a conflict of laws, the law that provides for greater openness to the public applies.

3. Where no more specific notice provisions are set forth in this Ordinance, notice of any meeting, including a draft agenda, shall be provided to the public in a manner and on a timeframe consistent with the criteria set forth in State and Tribal law. Where there is a conflict of laws, the law that provides for earlier notice shall apply.

4. The Board shall keep the following records:

a. minutes of all meetings;

b. recordings of all hearings conducted by the Board or the Office of the Engineer pursuant to the provisions of Chapter 2 Part 2, and Chapter 3 of this Ordinance;

c. all documents filed with or generated by the Board or the Office of the Engineer pursuant to this Ordinance;

d. any other records required by applicable provisions of State or Tribal law, provided that if there is a conflict of laws, the law that provides for more expansive record retention shall apply.

5. All Board records are public records and shall be made available to the public for inspection under

such reasonable terms and conditions as the Board shall establish.

1-2-105. Compensation and Expenses of the Board. As set forth in Article IV.I.2.h of the Compact, each Board member shall receive such compensation for services and reimbursement for expenses for attendance at Board meetings as shall be fixed by the State and the Tribal Council for the Board members appointed by the same. The compensation for the fifth Board member shall set jointly by the State and the Tribal Council. The compensation and expenses of the Federal ex officio member shall be paid by the United States.

1-2-106, Quorum and Voting of the Board. As set forth in Article IV.I.3 of the Compact, four voting members of the Board shall constitute a quorum. No Board action may be voted upon in the absence of a quorum. All Board decisions shall be by affirmative vote of a majority of the Board. If a proposal put to a vote of a quorum of Board members ends in a tie vote, the proposal, or matter under consideration is deemed disapproved or denied.

1-2-107. Powers and Duties of the Board.

1. The Board shall have those powers and duties set forth in Article IV.I.4 and 5 of the Compact and in this Ordinance, including those powers necessary and proper to carry out all Board responsibilities as set forth in the Compact and this Ordinance.

2. As set forth in the Compact, the Board shall have exclusive jurisdiction to resolve any controversy as between the Parties or between or among holders of Appropriation Rights and Existing Uses on the Reservation over the meaning and interpretation of the Compact and this Ordinance.

1-2-108. Technical Assistance to the Board and the Engineer. The NRD and the DNRC shall, within the limits of their respective expertise and resources, and when so requested by the Board or the Office of the Engineer, collect, compile, and analyze information related to waters of the Reservation, their use, and the Works associated with their use, and produce reports and provide technical assistance and advice to the Board or the Office of the Engineer.

1-2-109. Qualifications of the Water Engineer.

1. The Water Engineer shall be a professional in one or more of the following water resources or management related fields:

a. water resources management;

b. hydrology;

c. hydrogeology;

d. environmental science;

e. business or public administration;

f. biological science;

g. civil engineering;

h. environmental engineering; or

i. law.

2. The Water Engineer shall have a minimum of a bachelor's degree with 10 years of increasingly responsible experience, including three years of management experience, or a master's degree with seven years of increasingly responsible experience, including three years of management experience, or an appropriate combination of education and experience.

3. The Water Engineer shall have the skill to deal with a diverse and sometimes contentious public.

4. The Water Engineer shall have the ability to:

a. successfully manage the water resources staff;

b. provide technical assistance to the Board; and

c. act as a hearings officer and document decisions and orders in writing.

1-2-110. Duties of the Engineer. The Engineer shall be an employee of the Board and shall exercise the duties set forth in the Compact and this Ordinance, and as assigned by the Board pursuant to the Compact and this Ordinance. These duties include, but are not limited to:

1. The administration of water rights on the Reservation, and the enforcement of the terms of this Ordinance and the conditions of all Appropriation Rights, determinations, orders, regulations, plans, policies, guidelines, and other actions taken by the Engineer or the Board, pursuant to the Compact and this Ordinance;

2. Coordination with the Project Manager, as far as practicable, of the operations of the FIIP with the administration and enforcement of water rights outside of the FIIP;

3. The supervision and management of Staff; and

4. The development and submission to the Board of budget requests for approval by the Board and forwarding to the Tribes and State for the purpose of securing necessary appropriations.

1-2-111. Immunity from Suit. Members of the Board, the Engineer, any Designee, any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance, and any Staff shall be immune from suit for damages arising from the lawful discharge of an official duty associated with the carrying out of powers and duties set forth in the Compact or this Ordinance relating to the authorization, administration or enforcement of water rights on the Reservation.

1-2-112. Filing Fees. A filing fee shall be paid at the time an application is filed with the Office of the Engineer under Section 2-1-107, 2-2-104, 2-2-115, 2-2-116, 2-2-117, 2-2-118, 2-2-119, 2-2-123, or 2-2-124 of this Ordinance. The amount of the fee shall be the same as the fee charged by DNRC for the same type of application under State law, as those fees may be modified from time to time by the DNRC. The Board shall post notice of the applicable amount of these fees at the Office of the Engineer and on the Board's website.

CHAPTER II WATER USE

PART 1. GENERAL PROVISIONS

2-1-101. Registration of Uses of the Tribal Water Right in Existence as of the Effective Date of the Compact.

1. Pursuant to Article III.C.1.b of the Compact, the Tribes, each Tribal Member, and each Allottee who claims to have an Existing Use of waters of the Reservation which is part of the Tribal Water Right shall file a registration of Existing Use of the Tribal Water Right with the Engineer. Uses of the Tribal Water Right for which abstracts are appended to this Compact, including uses on the FIIP, are exempt from this registration requirement.

2. Historically irrigated allotments with serviceable delivery systems that are held by individuals and in trust by the United States, and are not served by the FIIP, shall be eligible to be registered pursuant to the provisions of Sections 2-1-101 et seq. of this Ordinance even if such allotments are not being irrigated on the Effective Date of the Compact.

3. The NRD shall provide assistance to the Tribes, Tribal Members, and Allottees in preparing registrations of Existing Uses of the Tribal Water Right for filing.

4. No Tribal Member or Allottee may exercise, for the same water use, both a registration of Existing Use of the Tribal Water Right and a Water Right Recognized Under State Law.

2-1-102. Process for Registration of Existing Use of the Tribal Water Right.

1. The Tribes, Tribal Members, and Allottees claiming a use of water that falls under the terms of Section 2-1-101 of this Ordinance shall, within five years of the Effective Date of this Ordinance, file a Registration Form with the Board documenting the registration of Existing Use of the Tribal Water Right and identifying:

a. the rate and volume of water used;

b. the source of supply for the use;

c. the point of diversion by legal land description;

d. the place of use by legal land description;

e. the period of use

f. the period of diversion;

g. the place of storage (if applicable);

h. the capacity of storage (if applicable);

i. the purpose; and

j. the means of diversion.

2. Upon receipt, the Board shall transmit the Registration Form to the Office of the Engineer.

3. Upon receipt of the Registration Form, the Office of the Engineer shall review the Registration Form within 180 days and may either issue a Registration Certificate or return a defective Registration Form to the filer, together with the reasons for returning it. Upon receiving a corrected Registration Form, the Office of the Engineer has 90 days from the certified receipt of the corrected Registration Form to issue a Registration Certificate or reject the registration. If the Office of the Engineer neither issues a Registration Certificate nor rejects the registration within the initial 180 day review period, the Registration Form shall be deemed approved and the Board shall issue a Registration Certificate. If the Office of the Engineer neither issues a Registration Certificate nor rejects the registration within 30 days of certified receipt of a corrected Registration Form, the Registration Form shall be deemed approved and the Board shall issue a Registration Certificate.

4. Any Person filing a Registration Form or a corrected Registration Form with the Office of the Engineer pursuant to subsections (1) and (3) of this Section who is dissatisfied with the rejection of that corrected Registration Form by the Office of the Engineer pursuant to subsection (3) of this Section may appeal that rejection to the Board by filing a notice of appeal to the Board within 30 days of the rejection of the corrected Registration Form. To be filed, a notice must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing. Immediately upon receipt by the Board, the notice of appeal shall be date stamped.

5. Any appeal to the Board filed pursuant to subsection (4) of this Section shall be conducted pursuant to the provisions of Section 3-1-104 of this Ordinance.

2-1-103. Fee for Filing Registration of Existing Use of the Tribal Water Right. The Board shall not charge a fee for the processing of registrations or corrected registrations of Existing Uses of the Tribal Water Right.

2-1-104. Tribal Member and Allottee Entitlements Pursuant to 25 U.S.C. Section 381. All Tribal Members' and Allottees' entitlements pursuant to 25 U.S.C. Section 381 are hereby recognized and confirmed. The

attributes of these entitlements shall be defined through either:

1. the process set forth in Section 2-1-101 et seq. of this Ordinance, if the Tribal Member or Allottee with an entitlement pursuant to 25 U.S.C. Section 381 also has a use of water eligible for the registration process set forth in those sections of this Ordinance; or

2. by applying for a New Appropriation as provided in Section 2-2-101 et. seq. of this Ordinance or by applying to develop a use of Flathead System Compact Water as provided in Section 2-2-118 of this Ordinance, if the Tribal Member or Allottee with an entitlement pursuant to 25 U.S.C. Section 381 does not have a use of water eligible for the registration process set forth in Section 2-1-101 et seq. of this Ordinance.

2-1-105. Tribal, Tribal Member and Allottee Challenge of a Registration Certificate Issued by the Office of the Engineer. The Tribes, Tribal Members, and Allottees may seek judicial review of any final decision by the Board pursuant to Section 2-1-102(4) of this Ordinance by filing a petition for judicial review with the Tribal Court of the Tribes within 30 days of the issuance of the final Board decision. In considering the petition, the Board's legal conclusions shall be reviewed for correctness and its factual findings for abuse of discretion.

2-1-106. Registration of Certain Other Previously Unrecorded Existing Uses. Persons who have Existing Uses on the Reservation as of the effective date of this Ordinance shall register such Existing Uses with the Board if those uses:

1. Were not required to be filed, pursuant to 85-2-222, MCA, and in fact were not filed as claims in the Montana General Stream Adjudication for a pre-1973 use of water arising under State law; or

2. Were developed on or after July 1, 1973, at a volume and flow rate that would qualify as an exception to the permit requirements of 85-2-306, MCA, and for which a notice of completion of Groundwater development (DNRC Form 602) or an application for provisional permit for completed Stock Water pit or reservoir (DNRC Form 605) was filed with the DNRC but not processed by the DNRC.

3. Were developed after July 1, 1973, at a volume and flow rate that would qualify as an exception to the permit requirements of 85-2-306, MCA, and for which a notice of completion of Groundwater development (DNRC Form 602) or an application for provisional permit for completed Stock Water pit or reservoir (DNRC Form 605) was not filed with the DNRC.

2-1-107. Process for Registration of Certain Other Previously Unrecorded Existing Uses.

1. Each Person claiming an Existing Use of water that falls under the terms of Section 2-1-106 of this Ordinance shall, within 180 days of the effective date of this Ordinance, file a Registration Form with the Board documenting that the Existing Use is for a purpose and with a flow rate and volume that falls within the terms of

Section 2-1-106, and identifying:

a. the date of first use of the water;

b. the source of supply for the use;

c. the point of diversion by legal land description;

d. the place of use by legal land description; and

e. the period of use.

2. Within 30 days of the Effective Date, the DNRC shall transmit to the Board all filed but not processed completion notices (DNRC Form 602 or 605) it has received for water uses excepted from the permitting requirements of State law developed within the boundaries of the Reservation after August 22, 1996. The transmission of these notices shall constitute compliance with Section 2-1-107(1) of this Ordinance for those uses eligible for registration pursuant to Section 2-1-106(2) of this Ordinance. No additional fee shall be required for the processing of the forms transmitted by the DNRC.

3. Upon receipt, the Board shall transmit the Registration Form to the Office of the Engineer.

4. Upon receipt of the Registration Form, the Office of the Engineer shall review the Registration Form within 180 days and may either issue a Registration Certificate or return a defective Registration Form to the filer, together with the reasons for returning it. If a corrected Registration Form is submitted within 30 days of its return by the Engineer, no new filing fee shall be required. Upon receiving a corrected Registration Form, the Office of the Engineer has 90 days from the certified receipt of the corrected Registration Form to issue a Registration Certificate or reject the registration. If the Office of the Engineer neither issue a Registration Certificate nor rejects the registration within the initial 180 day review period, the Registration Form shall be deemed approved and the Board shall issue a Registration Certificate. If the Office of the Engineer neither issues a Registration Certificate nor rejects the registration within 90 days of certified receipt of a corrected Registration Form, the Registration Form shall be deemed approved and the Board shall issue a Registration Certificate.

5. For any use registered under Section 2-1-106(1) of this Ordinance, the priority date of the use shall be the date of first beneficial use, and such a date shall be reflected on the Registration Certificate.

6. For any use under Section 2-1-106(2) of this Ordinance, the priority date for the use shall be the date of filing of the appropriate form, and such a date shall be reflected on the Registration Certificate.

7. For any use under Section 2-1-106(3) of this Ordinance, the priority date for the use shall be the Effective Date of the Compact, and that date shall be reflected on the Registration Certificate.

8. Any Person filing a corrected Registration Form with the Office of the Engineer pursuant to subsection

(2) of this Section who is dissatisfied with the rejection of that corrected Registration Form by the Office of the Engineer pursuant to subsection (2) of this Section may appeal that rejection to the Board by filing a notice of appeal to the Board within 30 days of the rejection of the corrected Registration Form. To be filed, a notice must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing. Immediately upon receipt by the Board, the notice of appeal shall be date stamped.

9. Any appeal to the Board filed pursuant to subsection (6) of this Section shall be conducted pursuant to the provisions of Section 3-1-104 of this Ordinance.

2-1-108. Failure to Register an Existing Use of Water. Failure to register an Existing Use that is subject to registration as provided for under Sections 2-1-101, 2-1-102, and 2-1-106(2) and (3) of this Ordinance, shall divest the holder of the Existing Use of any legal protections otherwise afforded under the Compact and this Ordinance, to the extent not inconsistent with federal law.

2-1-109. Limitation to Beneficial Use. Beneficial use shall be the basis, measure and limit to Appropriation Rights issued pursuant to this Ordinance.

2-1-110. No Adverse Possession. No right to use water within the Reservation may be acquired by prescription or by adverse possession of use.

2-1-111. Abandonment of Appropriation Right.

1. No part of the Tribal Water Right is subject to abandonment by nonuse.

2. If an Appropriator, other than a user of any portion of the Tribal Water Right, ceases to use all or a part of an Appropriation Right, or any Existing Use, with the intention of wholly or partially abandoning the right, or if the appropriator ceases using the right according to its terms and conditions with the intention of not complying with those terms and conditions, the Appropriation Right or Existing Use is, to the extent of the nonuse, considered abandoned and must immediately expire.

3. If an Appropriator, other than a user of any portion of the Tribal Water Right, ceases to use all or part of an Appropriation Right or Existing Use, or ceases using the Appropriation Right or Existing Use according to its terms and conditions for a period of 10 successive years and there was water available for use, there is a prima facie presumption that the Appropriator has abandoned the right for the part not used.

4. If an Appropriator ceases to use all or part of an Appropriation Right or Existing Use in compliance with a candidate conservation agreement initiated pursuant to 50 CFR 17.32 or because the land to which the water is applied to a beneficial use is contracted under a state, tribal, or federal conservation, mitigation, or set-aside

program:

a. the land set-aside and resulting reduction in use of the Appropriation Right or Existing Use from the conservation, mitigation, or set-aside program shall not be construed as an intent by the appropriator to wholly or partially abandon the Appropriation Right or Existing Use or to not comply with the terms and conditions attached to the right; and

b. the period of nonuse that occurs for part or all of the Appropriation Right or Existing Use as a result of the conservation, mitigation, or set-aside program shall not create and shall not be added to any previous period of nonuse to create a prima facie presumption of abandonment.

2-1-112. Procedure for Declaring Abandonment.

1. An Appropriator who claims to have been or alleges will be injured by the resumption of use of an Appropriation Right or Existing Use alleged to have been abandoned may file a petition with the Office of the Engineer to declare the Appropriation Right or Existing Use abandoned in whole or in part. Upon receipt of the petition, the Office of the Engineer shall date stamp it.

2. If the Engineer or Designee finds that the petition provides enough information to give rise to a question of abandonment, the petition shall be posted on the Board's website within 10 working days of the determination of validity. If the Engineer or Designee finds that the petition fails to provide enough information to give rise to a question of abandonment, the petition shall be rejected.

3. Upon a finding of validity pursuant to subsection (2) of this Section, a hearing shall be set within 180 days of the determination of validity, or any extended period of time, not to exceed 90 days, granted by the Engineer, for the Engineer or Designee to determine whether the Appropriation Right or Existing Use has been abandoned. Discovery prior to hearing will be as provided by the Engineer or Designee, and may commence following the notice of the hearing.

4. The owner of the right alleged to have been abandoned shall be personally served notice of the hearing by the Office of the Engineer and the hearing shall be publicly noticed by the Office of the Engineer once via a legal notice in a local newspaper of general circulation and posted by the Office of the Engineer on the Board's website for a period of 10 days commencing not less than 30 days from the date of the hearing.

5. At the hearing on the petition, the burden of proof shall be on the petitioner who must prove by a preponderance of the evidence that the Appropriation Right or Existing Use has been abandoned pursuant to Section 2-1-111 of this Ordinance, unless a prima facie presumption of abandonment has arisen pursuant to Section 2-1-111(3). In such circumstances, the burden of proof is shifted to the owner of the right alleged to have

been abandoned, who must prove by a preponderance of the evidence a lack of intent to abandon the right in question.

6. The hearing shall be recorded electronically and an official record maintained. All evidence that, in the opinion of the Engineer or Designee, possesses probative value shall be admitted, including hearsay, if it is the type of evidence commonly relied upon by reasonably prudent Persons in the conduct of their normal business affairs. Rules of privilege recognized by law shall be given effect. Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded.

7. A written decision by the Engineer or Designee shall be rendered within 60 days of the hearing, disseminated to the parties, and posted by the Office of the Engineer on the Board's website within 10 days of its issuance. If the individual who conducted the hearing becomes unavailable to the Office of the Engineer, a decision may be prepared by an individual who has read the record only if the demeanor of witnesses is considered immaterial by all parties; if any party considers the demeanor of any witness to be material to the resolution of the appeal, a new hearing must be held.

8. Any party to the abandonment hearing dissatisfied with the decision of the Engineer or Designee may appeal to the Board (and become an appellant) and obtain review of the Engineer's or Designee's decision. A notice of appeal to the Board must be filed with the Board within 30 days of the Engineer's or Designee's decision. To be filed, a notice must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing. Immediately upon receipt by the Board, the notice of appeal shall be date stamped.

9. Appeal to the Board pursuant to subsection (8) of this Section, shall be made and resolved pursuant to the provisions of Section 2-2-111 of this Ordinance.

10. Any petitioner whose petition is rejected by the Engineer or Designee as failing to provide enough information to give rise to a question of abandonment may appeal the Engineer's decision to the Board pursuant to the provisions of Section 3-1-104 of this Ordinance.

2-1-113. Prevention of Waste and Interference with Lawful Use.

1. Waters within the Reservation may not be wasted, nor may water be used unlawfully, nor may a lawful use of water be interfered with.

2. All facilities, Works and equipment associated with the withdrawal, impoundment, pumping, diversion, drainage, or transmission of waters on the Reservation shall be so constructed, installed, and maintained as to

prevent the Waste, contamination, or pollution of surface and Groundwater and to avoid injury to the lands and property of others. All wells, producing and non-producing, which may contaminate other surface or Groundwater must be properly abandoned or upgraded with a sanitary seal, in accordance with the water well criteria incorporated by reference in Section 1-1-111 of this Ordinance. All flowing wells shall be capped or equipped with valves so that the flow of water can be stopped when the water is not being put to beneficial use.

3. The Board, on its own initiative or through the Office of the Engineer, may require the recipient of any Appropriation Right issued pursuant to this Ordinance to construct or install a weir, head gate, valve, meter, gauge, or other reasonable and appropriate device for the control and measurement of water and for the prevention of Waste.

2-1-114. Issuance of Appropriation Right Does Not Constitute Permission to Trespass. The issuance of an Appropriation Right pursuant to this Ordinance does not constitute a license or permission to trespass on land which the holder of the Appropriation Right does not otherwise have a legal right to access, not does it constitute a ditch right.

2-1-115. Development of Enforceable Schedule for the Tribes' Other Instream Flow Rights.

1. As set forth in the Compact, each of the Tribes' instream flow rights identified in Article III.C.1.d.iii of the Compact shall not be enforceable until after an enforceable schedule for that stream reach is promulgated pursuant to the process set forth in this Section. This process shall not commence for any stream reach until the Compact has been finally approved by the Montana Water Court, and until the Montana Water Court has issued a final decree for the water court basin (76L or 76LJ) in which that stream reach lies, including the expiration of all time for appeals, or the resolution of any such appeal, whichever date is latest (the "Eligibility Date").

2. At any time after the Eligibility Date, the Tribes may initiate the enforceable schedule process for any given stream reach included in the rights identified in Article III.C.1.d.iii of the Compact by:

a. providing notice to water rights holders in the reach of the Tribes' initiation of the process to finalize and implement the enforceable schedule;

b. developing a full summary of all Water Rights Arising Under State Law in the reach, including a monthly time-step pattern of water use;

c. developing a summary of streamflow conditions, at or near each enforceable schedule compliance point within the reach area, utilizing:

i. streamflow gaging information; or

ii. an accepted hydrologic analysis procedure to estimate streamflow conditions. The method to develop

streamflow information will be based on the professional judgment of the Tribes' hydrologist responsible for coordinating the enforceable schedule process; and

d. preparing a report on the availability of water to fulfill the Tribes' instream flow water right for that reach area.

3. The Tribes shall prepare each proposed enforceable schedule based on a water budget that allows valid water rights to be exercised.

4. The Tribes shall hold one or more public meetings, and provide timely advanced notice to affected water users of each such meeting, to report on the completion of the water availability study and the proposed enforceable schedule for that reach area.

5. The Tribes shall consider the public comment received either at the public meeting(s) or within 30 days thereafter, and shall finalize the proposed enforceable schedule for a given reach area no fewer than 45 days after the day of the last public meeting.

6. The Tribes shall provide written notice to the Engineer of the finalized proposed enforceable schedule, including an explanation of the technical basis therefore. Upon receipt, the Engineer shall forward the proposed enforceable schedule to Staff for review.

7. Staff, using information from the written notice, as well as their own compilation of independent resources and analysis, if available, shall issue a recommended decision as to whether to adopt the enforceable schedule within 90 days of the date of the written notice provided by the Tribes pursuant to subsection (6) of this Section.

8. If the recommended decision is to adopt the enforceable schedule, a summary of the proposed enforceable schedule and the recommended decision shall be publicly noticed by the Office of the Engineer once via a legal notice in a local newspaper of general circulation and posted by the Office of the Engineer on the Board's website for a period not less than 45 days from the date the recommendation is issued. A summary of the proposed enforceable schedule and the recommended decision shall also be distributed electronically to individuals or entities who have registered with the Board to receive electronic notice. If no objections are filed within 45 days of the initial Publication of the recommended decision by the Office of the Engineer, or if all filed objections are unconditionally withdrawn prior to being ruled upon, the application shall be granted by the Engineer or Designee within 10 days after expiration of the time for filing objections or after the unconditional withdrawal of the last objection, whichever date is later.

9. Objections to a proposed enforceable schedule may be filed only by holders of water rights in the

particular stream reach for which the enforceable schedule is proposed. The only cognizable ground for objection is that the proposed enforceable schedule will have an adverse effect on the objector's water right. An objection must describe the alleged adverse effect on the objector's water right. The burden of proof shall be on the objector.

10. An objector or the Tribes may elect to have any valid objection decided on the record or after hearing. If the objector elects to have a hearing, that request must be made at the same time as the filing of the objection or the objector's right to a hearing is waived. The Tribes must invoke the right to a hearing within 10 days of receiving notice of the objection or the Tribes' right to a hearing is waived.

11. Discovery prior to hearing will be as provided by the Engineer or Designee, and may commence following the receipt of a valid objection.

12. The Engineer or Designee, after issuance of notice of hearing, may not communicate with any party to that case or any party's representative(s) in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate.

13. The hearing shall be recorded electronically and an official record maintained.

14. All evidence that, in the opinion of the Engineer or Designee, possesses probative value shall be admitted, including hearsay, if it is the type of evidence commonly relied upon by reasonably prudent Persons in the conduct of their normal business affairs. Rules of privilege recognized by law shall be given effect. Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded.

15. A written decision by the Engineer or Designee shall be rendered within 60 days of the hearing, disseminated to the parties, and posted by the Office of the Engineer on the Board's website within 10 days of its issuance. If the individual who conducted the hearing becomes unavailable to the Office of the Engineer, a decision may be prepared by an individual who has read the record only if the demeanor of witnesses is considered immaterial by all parties to the case. If any party considers the demeanor of any witness to be material to the resolution of the appeal, a new hearing must be held.

16. The Tribes or any objector dissatisfied with the final decision of the Engineer or Designee may appeal to the Board (and become an appellant) and obtain review of the Engineer's or Designee's decision. A notice of appeal to the Board must be filed with the Board within 30 days of the Engineer's or Designee's decision. To be filed, a notice must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing. Immediately upon receipt by the Board, the notice of appeal shall be date

stamped. Appeal to the Board shall be resolved pursuant to the provisions of Section 2-2-111 of this Ordinance.

17. If the recommended decision is to reject the proposed enforceable schedule, the Tribes may withdraw the proposed enforceable schedule within 10 days of the issuance of the recommended decision, or may appeal the recommended decision to the Engineer by filing a notice of appeal within 30 days of issuance of the recommended decision. The Tribes may elect to have the appeal decided on the record, after submission of additional evidence and argument, or after hearing. If the Tribes elect to have a hearing, that request must be made at the same time as the filing of the notice of appeal or the right to a hearing is waived. The notice of appeal must specify those parts of the recommended decision claimed to be in error.

18. Within 60 days from the filing of the notice of appeal, or any extended period of time, not to exceed 60 days, granted by the Engineer or Designee, the Tribes may submit additional factual evidence and legal argument in support of the proposed enforceable schedule. Staff who issued the recommended decision shall have 45 days from the Tribes' submission to revise, amend, or affirm the recommended decision in a second recommended decision that explains in writing the rationale for the second recommended decision.

19. If the recommended decision or second recommended decision is to reject the proposed enforceable schedule and no notice of appeal is filed pursuant to this Section, the proposed enforceable schedule shall be deemed rejected the day after expiration of the time for filing a notice of appeal. The rejection of a proposed enforceable schedule does not preclude the Tribes from filing another proposed enforceable schedule for the same or any other stream reach identified in the rights set forth in Article III.C.1.d.iii of the Compact.

20. The Tribes bear the burden of demonstrating to the Engineer or Designee by a preponderance of the evidence, whether a hearing is held or not, that the recommended decision or second recommended decision is in error.

21. If the Tribes request a hearing before the Engineer or Designee, a hearing shall be held no later than the latest of the following:

a. 90 days after the filing of the notice of appeal; or

b. 30 days after the issuance of a second recommended decision pursuant to subsection (2) of this Section, whichever is later.

22. The hearing shall be recorded electronically and an official record maintained. All evidence that, in the opinion of the Engineer or Designee, possesses probative value shall be admitted, including hearsay, if it is the type of evidence commonly relied upon by reasonably prudent Persons in the conduct of their normal business affairs. Rules of privilege recognized by law shall be given effect. Evidence which is irrelevant,

immaterial, or unduly repetitious shall be excluded.

23. A decision by the Engineer or Designee to reverse, modify, or affirm the recommended decision or the second recommended decision shall be made in writing within 60 days after the later of:

a. the filing of a notice of appeal pursuant to subsection (1) of this Section;

b. the submission of additional evidence or legal argument pursuant to subsection (2) of this Section;

c. issuance of Staff's second recommended decision; or

d. the completion of the hearing.

24. If the Engineer or Designee reverses the recommended decision or the second recommended decision, and determines that the enforceable schedule should not have been rejected, the proposed enforceable schedule shall be publicly noticed to the public and processed pursuant to the provisions of subsections (8)-(16) of this Section.

25. If the Engineer or Designee affirms the recommended decision or the second recommended decision, resulting in the rejection of the proposed enforceable schedule, the Tribes may either accept that decision by withdrawing the proposed enforceable schedule or taking no further action, or may appeal that decision to the Board pursuant to Section 2-2-111 of this Ordinance. If no timely notice of appeal is filed, the proposed enforceable schedule shall be deemed rejected on the day after the expiration of the time to file the notice of appeal.

26. Any final Board decision on implementation of the enforceable schedule made pursuant to the process outlined in this Section may be appealed pursuant to Section 2-2-112 of this Ordinance.

PART 2. PERMIT AND CHANGE APPLICATION PROCESS

2-2-101. Appropriation Rights and Change in Use authorizations on the Reservation. After the Effective Date, a Person within the exterior boundaries of the Reservation may not Appropriate surface water or Groundwater for a new beneficial use, or change an Existing Use, or commence construction of diversion, impoundment, withdrawal, or related distribution Works except by applying for and receiving an Appropriation Right, or Change in Use authorization, from the Board.

2-2-102. Burden of Proof for Ground or Surface Water Permits and Change Authorizations.

1. For any application for an Appropriation Right or Change in Use that is not one of the categories of Appropriation Right identified in Sections 1-1-112(1) or 2-2-118 of this Ordinance, applicants for an Appropriation Right, or for a Change in Use authorization must prove by a preponderance of the evidence that the proposed new Appropriation Right or Change in Use authorization will not adversely affect any Appropriator.

2. For any application for an Appropriation Right or Change in Use that is not one of the categories of Appropriation Right identified in Sections 1-1-112(1) or 2-2-118 of this Ordinance, the Board, Engineer, or Designee may modify or condition the issuance of Appropriation Right or Change in Use authorization applied for, to assure that:

a. the new Appropriation Right or Change in Use authorization will not adversely affect any Appropriator;

b. the proposed means of diversion, construction, and operation of the appropriation Works are adequate;

c. except in the case of instream flows or other non-consumptive uses, the applicant has the possessory interest or the written consent of the Person(s) with possessory interest in the property where the water is to be put to beneficial use;

d. the water quality of an Appropriator will not be adversely affected;

e. the proposed use will be consistent with the classification of water set for the source of supply pursuant to water quality standards established under the federal Clean Water Act, 33 USC Section 1251 et seq., and contained in regulations promulgated under the Confederated Salish and Kootenai Tribes' Water Quality Management Ordinance, Tribal Ordinance 89B; and

f. the proposed Appropriation Right or Change in Use authorization will not impair the ability of a discharge permit holder to satisfy effluent limitations set forth in a permit issued in accordance with water quality standards established under the federal Clean Water Act, 33 USC Section 1251 et seq., and contained in regulations promulgated under the Confederated Salish and Kootenai Tribes' Water Quality Management Ordinance, Tribal Ordinance 89B.

2-2-103. Pre-Application Meeting with Office of the Engineer. Prior to applying to the Board for a new Appropriation Right or Change in Use authorization, within the exterior boundaries of the Flathead Reservation, applicants may meet informally with Staff regarding the application process and information requirements.

2-2-104. Application to Board.

1. An applicant for a new Appropriation Right or Change in Use authorization must:

a. pay the appropriate application fee in the amount set by the Board;

b. fill out completely:

i. the Flathead Reservation Appropriation Right Application; or

ii. the Flathead Reservation Application for a Change in Use authorization; and

iii. all applicable addenda;

c. attach to each application all required maps; and

d. sign, date, and notarize or otherwise swear under appropriate oath to the accuracy of the contents of each application.

2. Upon the day of the receipt of an application, or amendment to an application, for a new Appropriation Right or Change in Use authorization, the Office of the Engineer must stamp it received.

3. If an application for a new Appropriation Right is ultimately granted, the priority date of the application is the date the application is stamped received by the Office of the Engineer.

4. All application forms may, upon recommendation by the Engineer, be modified by a unanimous vote of the Board. Any such modification is pursuant to and does not constitute a modification of this Ordinance or the Compact.

2-2-105. Adequate to Process Review.

1. Within 30 days of receipt by the Office of the Engineer of an application for a new Appropriation Right or Change in Use authorization, Staff shall review the application and make a determination whether the application is adequate to process. An application is adequate to process if it:

a. clearly identifies the proposed project; and

b. contains the information required by the following forms:

i. Flathead Reservation Appropriation Right Application, including for Groundwater applications Addendum B - "Flathead Reservation Groundwater Minimum Aquifer Testing Requirements"; or

ii. Flathead Reservation Application for a Change in Use authorization.

2. Staff may waive aquifer testing requirements if sufficient hydrogeologic information already exists on the source and in the location of the proposed development.

3. An application determined to be adequate to process shall be posted on the Board's website within 10 working days of the determination of adequacy.

2-2-106. Not Adequate to Process Determination.

1. If Staff determines an application for a new Appropriation Right or Change in Use authorization is not adequate to process, the Office of the Engineer shall send a letter to the applicant notifying the applicant of the defects in the application.

2. An applicant has 90 days from the date of mailing of the notice of inadequacy pursuant to subsection (1) of this Section to make the application adequate to process. An application for a new Appropriation Right whose defects are timely corrected and which is ultimately granted retains its priority of the date of the initial application.

3. Upon receipt of the information from the applicant to correct deficiencies, Staff must review the updated application and make a determination within 30 days whether the application is adequate to process.

4. An application that is not timely made adequate to process, either through the applicant's failure to respond to the notice of inadequacy issued pursuant to subsection (1) of this Section within the timeframe set forth in subsection (2) of this Section, or by the applicant's failure to provide sufficient information in response to a notice of inadequacy issued pursuant to subsection (1) of this Section within the timeframe set forth in subsection (2) of this Section, shall be deemed denied.

5. An applicant who disagrees with the decision to deny may appeal that decision to the Board pursuant to Section 3-1-104 of this Ordinance. If such an appeal is filed, the Engineer shall be the appellee.

2-2-107. Application Analysis and Recommended Decision.

1. Prior to the expiration of the time periods set forth in Sections 2-2-105(1), 2-2-106(2), 2-2-106(3), or 2-2-108(2) of this Ordinance, Staff may meet informally with an applicant to discuss an application, including any proposed Mitigation Plan. The results of such meetings shall be documented by a summary memo prepared by Staff and included in the application file. An applicant may also submit a memo documenting the meeting, which becomes part of the application file. If an application submitted pursuant to Section 2-2-104 or a Mitigation Plan submitted pursuant to Section 2-2-108(2) of this Ordinance is amended during this informal process, the amended application shall be reviewed by an individual on Staff who was not involved in the informal process to determine whether the amendments are so substantial that they constitute a new application. If it is determined that the amended application constitutes a new application, that application must be reviewed in its entirety pursuant to Sections 2-2-105 and 2-2-106 of this Ordinance. A new application fee must be submitted. A determination that an application amendment is so substantial as to constitute a new application may be appealed to the Engineer pursuant to Section 2-2-109 of this Ordinance.

2. Staff shall analyze an application determined to be adequate to process pursuant to Section 2-2-105 of this Ordinance within 180 days of the determination of adequacy using tools or techniques that may include:

a. independent resources compiled by Staff (including, but not limited to, Water Resources Surveys and field notes, aerial photographs, water rights decrees, stream gauging records, well logs, and water rights records);

b. water use records (water measurement, ranch logs, etc.) submitted by the applicant;

c. field inspection by Staff;

d. hydrologic or geohydrologic evaluation completed by Staff, provided that all model results, if any, shall be documented.

3. All information relied on by Staff in analyzing an application pursuant to this Section shall be documented in the application file.

4. Staff, using information from the application as well as their own compilation of independent resources and analysis, shall draft a recommended decision with findings of fact and conclusions of law determining:

a. whether the proposed Appropriation Right or Change in Use authorization will cause adverse effect to any Appropriator; and

b. whether and, if so, what amount of Mitigation is required before the proposed Appropriation Right or Change in Use authorization may be issued.

5. If the recommended decision is to grant the application, a summary of the application and the recommended decision shall be publicly noticed by the Office of the Engineer once via a legal notice in a local newspaper of general circulation and posted by the Office of the Engineer on the Board's website for a period not less than 45 days from the date the recommendation is issued. A summary of the application and the recommended decision shall also be distributed electronically to individuals or entities who have registered with the Board to receive electronic notice. If no objections are filed within 45 days of the initial Publication of the recommended decision by the Office of the Engineer, or if all filed objections are unconditionally withdrawn prior to being ruled upon, the application shall be granted by the Engineer or Designee within 10 days after expiration of the time for filing objections or after the unconditional withdrawal of the last objection, whichever date is later.

6. If the recommended decision is to deny the application, the applicant may withdraw the application within 10 days of the issuance of the recommended decision or appeal the recommended decision to the Engineer pursuant to Section 2-2-109 of this Ordinance. The application filing fee shall not be refunded upon withdrawal. Failure to withdraw the application or file an appeal within the applicable timeframes shall result in the application being deemed denied on the day after the expiration of the time to appeal.

7. If the recommended decision is to grant the application with conditions other than Mitigation, the application shall be noticed to the public and processed pursuant to the procedures set forth in Sections 2-2-107(5) and 2-2-110 of this Ordinance unless the applicant withdraws the application within 30 days of the issuance of the recommended decision or appeals the recommended decision to the Engineer pursuant to Section 2-2-109 of this Ordinance. The application filing fee shall not be refunded upon withdrawal.

8. Amendments to applications are not allowed after the issuance of a recommended decision on that application, except as provided in Section 2-2-108(2) of this Ordinance.

2-2-108. Process if Mitigation Required.

1. If Staff analysis of an application concludes that Mitigation is necessary to approve an application, a recommended decision shall be issued to that effect. Upon issuance of a recommended decision finding that Mitigation is required, the applicant may:

a. withdraw the application (with no refund of the application filing fee);

b. appeal the recommended decision to the Engineer pursuant to Section 2-2-109 of this Ordinance; or

c. prepare a Mitigation Plan.

2. If the applicant chooses to prepare a Mitigation Plan, the running of the time set forth in Section 2-2-107(2) of this Ordinance for processing that application is suspended until a timely Mitigation Plan is received from the applicant. The Mitigation Plan must be submitted within 180 days of issuance of the recommended decision requiring Mitigation, or of the decision of the Engineer or Designee as set forth in Section 2-2-109(10) of this Ordinance, whichever date is later, and must include either or both of:

a. an application for a Change in Use authorization for another water right so as to provide for the required Mitigation; and/or

b. amendments describing the source, volume, flow rate, point of diversion, place of use, period of use, and place of storage of mitigation water that comes from other than a change authorization.

3. The running of the time set forth in Section 2-2-107(2) of this Ordinance for analyzing the application and issuing a recommended decision resumes upon the timely receipt by the Office of the Engineer of the material(s) required by subsection (2) of this Section.

4. If a Mitigation Plan is timely submitted by an applicant following a decision of the Engineer or Designee as set forth in Section 2-2-109(10) of this Ordinance, Staff shall issue a new recommended decision concerning the application within 180 days of the timely submission of the Mitigation Plan.

5. If the recommended decision is to grant the application conditioned on the Mitigation Plan submitted by the applicant pursuant to subsection (2) of this Section, the application shall be noticed to the public and processed pursuant to the procedures set forth in Sections 2-2-107(5) and 2-2-110 of this Ordinance.

6. If the recommended decision is to deny the application, the applicant may withdraw the application within 10 days of the issuance of the recommended decision or appeal the recommended decision to the Engineer pursuant to Section 2-2-109 of this Ordinance. The application filing fee shall not be refunded upon withdrawal. Failure to withdraw the application or file an appeal within the applicable timeframes shall result in the application being deemed denied on the day after the expiration of the time to appeal.

7. If the Mitigation Plan is not submitted within 180 days of issuance of the recommended decision

requiring Mitigation the application shall be deemed denied.

2-2-109. Appeal to Engineer from Recommended Decision.

1. If a recommended decision issued pursuant to Sections 2-2-107 or 2-2-108 of this Ordinance is to deny an application, or grant it with a requirement of Mitigation or other conditions, the applicant may appeal to the Engineer by filing a notice of appeal within 30 days of issuance of the recommended decision. An applicant may elect to have the appeal decided on the record, after submission of additional evidence and argument, or after hearing. If the applicant elects to have a hearing, that request must be made at the same time as the filing of the notice of appeal or the right to a hearing is waived. The notice of appeal must specify those parts of the recommended decision claimed to be in error.

2. Within 60 days from the filing of the notice of appeal, or any extended period of time, not to exceed 60 days, granted by the Engineer or Designee, the applicant may submit additional factual evidence and legal argument in support of the application. Staff who issued the recommended decision shall have 45 days from the applicant's submission to revise, amend, or affirm the recommended decision in a second recommended decision that explains in writing the rationale for the second recommended decision.

3. If the recommended decision or second recommended decision is to deny an application and no notice of appeal is filed pursuant to this Section, the application shall be deemed denied the day after expiration of the time for filing a notice of appeal.

4. The applicant bears the burden of demonstrating to the Engineer or Designee by a preponderance of the evidence, whether a hearing is held or not, that the recommended decision or second recommended decision is in error.

5. If the applicant requests a hearing before the Engineer or Designee, a hearing shall be held no later than the latest of the following:

a. 90 days after the filing of the notice of appeal; or

b. 30 days after the issuance of a second recommended decision pursuant to subsection (2) of this Section, whichever is later.

6. The hearing shall be recorded electronically and an official record maintained. All evidence that, in the opinion of the Engineer or Designee, possesses probative value shall be admitted, including hearsay, if it is the type of evidence commonly relied upon by reasonably prudent Persons in the conduct of their normal business affairs. Rules of privilege recognized by law shall be given effect. Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded.

7. A decision by the Engineer or Designee to reverse, modify, or affirm the recommended decision or the second recommended decision shall be made in writing within 60 days after the later of:

a. the filing of a notice of appeal pursuant to subsection (1) of this Section;

b. the submission of additional evidence or legal argument pursuant to subsection (2) of this Section;

c. issuance of Staff's second recommended decision; or

d. the completion of the hearing.

8. If the Engineer or Designee reverses the recommended decision or the second recommended decision, and determines that the application should be granted, the application shall be publicly noticed to the public and processed pursuant to the provisions of Section 2-2-107(5) and Section 2-2-110 of this Ordinance.

9. If the Engineer or Designee affirms the recommended decision or the second recommended decision, resulting in the denial of an application, the applicant may either accept that decision by withdrawing the application or taking no further action, or may appeal that decision to the Board pursuant to Section 2-2-111 of this Ordinance. The application filing fee shall not be refunded upon withdrawal. If no timely notice of appeal is filed, the application shall be deemed denied on the day after the expiration of the time to file the notice of appeal.

10. If the Engineer or Designee affirms the recommended decision or the second recommended decision, resulting in the granting of an application with a requirement of conditions other than Mitigation, the applicant may withdraw the application; file with the Office of the Engineer written acceptance of the conditions within 30 days of the Engineer's or Designee's decision, in which case the application will be noticed to the public and processed pursuant to the provisions of Sections 2-2-107(5) and 2-2-110 of this Ordinance; or appeal the decision to the Board pursuant to Section 2-2-111 of this Ordinance. The application filing fee shall not be refunded upon withdrawal. Failure to withdraw the application, file written acceptance of the condition, or file an appeal within the applicable timeframes shall result in the application being deemed denied on the day after the expiration of the time to appeal.

11. If an applicant has appealed to the Engineer a Staff determination that Mitigation is necessary pursuant to Section 2-2-108(1)(b) of this Ordinance, and the Engineer or Designee affirms the recommended decision resulting in a determination that Mitigation is required before the application may be granted, the applicant may withdraw the application; appeal the decision to the Board pursuant to Section 2-2-111 of this Ordinance; or prepare a Mitigation Plan pursuant to Section 2-2-108(2) of this Ordinance. The application filing fee shall not be refunded upon withdrawal. Failure to withdraw the application, file a Mitigation Plan, or file an appeal within the applicable timeframes shall result in the application being deemed denied on the day after the

expiration of the time to file a Mitigation Plan.

12. If the Engineer or Designee affirms a recommended decision or second recommended decision that found a Mitigation Plan inadequate to justify the issuance of the proposed Appropriation Right or Change in Use authorization, the applicant may either accept that decision by withdrawing the application or taking no further action, or may appeal that decision to the Board pursuant to Section 2-2-111 of this Ordinance. The application filing fee shall not be refunded upon withdrawal. If no timely notice of appeal is filed, the application shall be deemed denied on the day after the expiration of the time to file the notice of appeal.

13. Any applicant wishing to appeal a decision of the Engineer or Designee pursuant to this Section must file a notice of appeal with the Board. Any such notice of appeal must be filed with the Board within 30 days of the Engineer's or Designee's decision. To be filed, a notice must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing. Immediately upon receipt by the Board, the notice of appeal shall be date stamped.

2-2-110. Notice and Hearing on Recommended Decision to Grant.

1. Any Person alleging that they will suffer adverse effect from the grant of an application for proposed Appropriation Right or Change in Use authorization may file an objection to a recommended decision to grant an application. To be valid, an objection must describe the alleged adverse effect on the objector's water right.

2. An objector or an applicant may elect to have any valid objection decided on the record or after hearing. If the objector elects to have a hearing, that request must be made at the same time as the filing of the objection or the objector's right to a hearing is waived. The applicant must invoke the right to a hearing within 10 days of receiving notice of the objection or the applicant's right to a hearing is waived.

3. Discovery prior to hearing will be as provided by the Engineer or Designee, and may commence following the receipt of a valid objection.

4. If, prior to the hearing, valid objections are withdrawn pursuant to an agreement between or among the applicant and objector(s) setting forth various conditions on the application, the Engineer or Designee shall grant the application subject to those conditions necessary to satisfy the criteria set forth in Section 2-2-102(1) of this Ordinance, but the Engineer or Designee has the discretion to accept or reject other conditions of the agreement between or among the applicant and objector(s).

5. The Engineer or Designee, after issuance of notice of hearing, may not communicate with any party to that case or any party's representative(s) in connection with any issue of fact or law in the case except upon

notice and opportunity for all parties to participate.

6. The hearing shall be recorded electronically and an official record maintained.

7. All evidence that, in the opinion of the Engineer or Designee, possesses probative value shall be admitted, including hearsay, if it is the type of evidence commonly relied upon by reasonably prudent Persons in the conduct of their normal business affairs. Rules of privilege recognized by law shall be given effect. Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded.

8. The burden of proof is on the applicant to prove the applicable criteria of Section 2-2-102(1) of this Ordinance by a preponderance of evidence.

9. A written decision by the Engineer or Designee shall be rendered within 60 days of the hearing, disseminated to the parties, and posted by the Office of the Engineer on the Board's website within 10 days of its issuance. If the individual who conducted the hearing becomes unavailable to the Office of the Engineer, a decision may be prepared by an individual who has read the record only if the demeanor of witnesses is considered immaterial by all parties to the case. If any party considers the demeanor of any witness to be material to the resolution of the appeal, a new hearing must be held.

10. Any applicant or objector dissatisfied with the final decision of the Engineer or Designee may appeal to the Board (and become an appellant) and obtain review of the Engineer's or Designee's decision. A notice of appeal to the Board must be filed with the Board within 30 days of the Engineer's or Designee's decision. To be filed, a notice must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing. Immediately upon receipt by the Board, the notice of appeal shall be date stamped.

2-2-111. Appeal to the Board.

1. Any question not raised before the Engineer or Designee may not be raised in the appeal to the Board unless it is shown to the satisfaction of the Board that there was good cause for failure to raise the question before the Engineer or Designee.

2. Appeal to the Board of decisions of the Engineer or Designee shall be confined to the record. If, before the date set for hearing the appeal, application is made to the Board for leave to present additional evidence and it is shown to the satisfaction of the Board that the additional evidence is material and that there were good reasons for failing to present it in the proceeding before the Engineer or Designee, the Board may order that the additional evidence be taken before the Engineer or Designee upon conditions determined by the Board,

including the deadline for submission of additional evidence to the Engineer or Designee and for the conclusion of the Engineer's or Designee's review of any such additional evidence. The Engineer or Designee may modify the findings and decision by reason of the additional evidence or may affirm the prior decision and shall file a modified decision or notice of affirming the decision with the Board pursuant to a reasonable deadline set by the Board.

3. If the appellant requests an oral argument, the Board must hold oral argument on the appeal. If the appellant does not request an oral argument, the Board may, in its discretion, order oral argument or may resolve the appeal without one.

4. Review by the Board:

a. the review by the Board must be confined to the record. In cases of alleged irregularities in procedure before the Engineer or Designee not shown in the record, proof of the irregularities may be taken by the Board. The Board, upon request, shall hear oral argument and receive written briefs.

b. the Board may not substitute its judgment for that of the Engineer or Designee as to the weight of the evidence on questions of fact.

c. the Board may affirm the decision of the Engineer or Designee or remand the case for further proceedings.

d. the Board may reverse or modify the decision if substantial rights of an appellant have been prejudiced because:

i. the Engineer's or Designee's findings, inferences, conclusions, or decisions are:

(1) in violation of constitutional or statutory provisions;

(2) in excess of the authority of the Engineer or Designee;

(3) made upon unlawful procedure;

(4) affected by other error of law;

(5) clearly erroneous in view of the record as a whole;

(6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

ii. findings of fact, upon issues essential to the decision, were not made although requested.

2-2-112. Appeal to Court of Competent Jurisdiction. Pursuant to Article IV.I.6 of the Compact, an aggrieved party may obtain review of a final decision of the Board by filing a petition for judicial review with a Court of Competent Jurisdiction within 30 days of the issuance of the final Board decision. In considering the

petition, the Board's legal conclusions shall be reviewed for correctness and its factual findings for abuse of discretion. In the event that a court determines that it lacks subject matter or personal jurisdiction to rule on a petition for judicial review of a Board decision, the party filing the petition shall be entitled to petition for judicial review from any other Court of Competent Jurisdiction within thirty days from the date of a final court order finding lack of jurisdiction.

2-2-113. Completion.

1. Whenever an Appropriation Right or Change in Use authorization is issued under this Chapter, the Engineer or Designee shall specify in writing as part of the Appropriation Right or Change in Use authorization issued, or in any authorized extension of time provided pursuant to subsection (2) of this Section, the time limits for commencement of the appropriation Works, completion of construction, and actual application of water to the proposed beneficial use. In fixing those time limits, the Engineer or Designee shall consider the cost and magnitude of the project, the engineering and physical features to be encountered, and, on projects designed for gradual development and gradually increased use of water, the time reasonably necessary for that gradual development and increased use. The Engineer or Designee shall issue the Appropriation Right or Change in Use authorization, or the authorized extension of time, subject to the terms, conditions, restrictions and limitations the Engineer or Designee considers necessary to ensure that work on the Appropriation is commenced, conducted, and completed and that the water is actually applied in a timely manner to the beneficial use specified in the Appropriation Right or Change in Use authorization.

2. The Engineer or Designee, for good cause shown, may extend the time limits specified in the Appropriation Right or Change in Use authorization for commencement of the appropriation Works, completion of construction, and actual application of water to the proposed beneficial use. If commencement of the appropriation Works, completion of construction, or actual application of water to the proposed beneficial use is not completed within the time limit set forth in the Appropriation Right or Change in Use authorization, or by any extension granted pursuant to this subsection, the Appropriation Right or Change in Use authorization is void upon lapse of the time limit.

3. Any owner of an Appropriation Right or Change in Use authorization who disagrees with the time limit specified by the Engineer or Designee pursuant to subsections (1) and (2) of this Section may appeal the Engineer's decision to the Board pursuant to Section 2-2-111 of this Ordinance. A notice of appeal must be filed with the Board within 30 days of the Engineer's or Designee's decision. To be filed, a notice must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the

Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing.

2-2-114. Compliance with Completion Deadline. Upon actual application of water to the proposed beneficial use within the time allowed by the Engineer or Designee pursuant to Section 2-2-113 of this Ordinance, the owner of the Appropriation Right or Change in Use authorization shall notify the Office of the Engineer that the Appropriation has been completed. The notification must contain a certified statement by an individual with experience in the design, construction, or operation of appropriation Works describing how the Appropriation was completed. The Office of the Engineer shall review the certified statement and may then inspect the Appropriation, and if it determines that the Appropriation has been completed in substantial accordance with the Appropriation Right or Change in Use authorization, it shall issue the owner of the Appropriation Right or Change in Use authorization a Flathead Reservation Appropriation Right Document. The original of the document shall be sent to the owner of the Appropriation Right or Change in Use authorization, and a duplicate shall be kept in the Office of the Engineer.

2-2-115 Redundant and Substitute Wells.

1. An Appropriator may change an Appropriation Right or Existing Use without first applying for a Change in Use authorization pursuant to Sections 2-2-101 et seq. of this Ordinance for the purpose of constructing a Substitute Well if:

a. the rate and volume of the appropriation from the Substitute Well are equal to or less than that of the Well being replaced;

b. the water from the Substitute Well is appropriated from the same Groundwater source as the water appropriated from the Well being replaced; and

c. a timely, correct and complete Notice of Substitute Well is submitted to the Engineer as provided in subsection 2 of this Section.

2. Review.

a. Within 60 days after a Substitute Well is completed and delivering water, the Appropriator shall file a Notice of Substitute Well with the Office of the Engineer on a form provided by the Board. Upon receipt of the Notice, the Office of the Engineer shall date stamp it.

b. The Engineer or Designee shall review the Notice of Substitute Well within 90 days of the date stamped on it pursuant to subsection (2)(a) of this Section, and shall issue a Change in Use authorization if all of the criteria identified in subsection (1) of this Section have been met and the Notice of Substitute Well is correct and complete.

c. The Engineer or Designee may not issue a Change in Use authorization until a correct and complete Notice of Substitute Well has been filed with the Office of the Engineer. The Office of the Engineer shall return to the Appropriator a Notice that is determined by Staff to be defective, along with a description of defects in the Notice. The Appropriator shall refile a corrected and completed Notice of Substitute Well within 30 days of notification of defects or within a further time as the Engineer or Designee may allow, not to exceed 180 days. If the Appropriator does not refile within that timeframe, the Appropriation Right will be deemed denied and the Appropriator must then comply with the provisions of subsection (d) of this Section.

d. If a Notice of Substitute Well is not completed within the time allowed, the Appropriator shall:

i. cease appropriation of water from the Substitute Well pending approval by the Engineer or Designee; and

ii. submit an application for a Change in Use authorization pursuant to Section 2-2-104 of this Ordinance; or

iii. comply with the well abandonment procedures, standards and rules adopted by the board of water well contractors pursuant to 37-43-202, MCA, or any successor procedures, standards and rules that are promulgated in State law.

3. Wells that have been determined to be abandoned pursuant to Sections 2-1-111 and 2-1-112 of this Ordinance are not eligible to be replaced by Substitute Wells under this Section.

4. For each well that is replaced under subsection (1) of this Section, the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202, MCA, or any successor procedures, standards and rules that are promulgated in State law.

5. An Appropriator may change an Appropriation Right or Existing Use without first applying for a Change in Use authorization pursuant to Section 2-2-101, et seq. of this Ordinance for the purpose of constructing a Redundant Well in a Public Water Supply System if the Redundant Well:

a. withdraws water from the same Groundwater source as the original well; and

b. is required by a State, federal, or Tribal agency.

6. The priority date of the Redundant Well is the same as the priority date of the original well. Only one well may be used at one time.

7. Within 60 days of completion of a Redundant Well, the Appropriator shall file a Notice of Construction of Redundant Well with the Office of the Engineer on a form provided by the Board. The Engineer or Designee shall review and process the Notice pursuant to the procedures set forth in subsection (2) of this Section.

8. If a Notice of Construction of Redundant Well is not completed within the time allowed, the Appropriator shall:

a. cease appropriation of water from the Redundant Well pending approval by the Engineer or Designee; and

b. submit an application for a Change in Use authorization pursuant to Section 2-2-104 of this Ordinance; or

c. comply with the well abandonment procedures, standards and rules adopted by the board of water well contractors pursuant to 37-43-202, MCA, or any successor procedures, standards and rules that are promulgated in State law.

9. Any Appropriator aggrieved by a determination that a corrected Notice required by subsection (2) or (7) of this Section, as applicable, is defective may appeal that determination to the Board by filing a notice of appeal to the Board within 30 days of the rejection of the corrected Notice. To be filed, a notice must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing.

10. Any appeal to the Board filed pursuant to subsection (9) of this Section shall be conducted pursuant to the provisions of Section 3-1-104 of this Ordinance. If such an appeal is filed, the Engineer shall be the appellee.

2-2-116. Appropriation Rights for Stock Water Allowances.

1. Appropriation Rights for Stock Water Allowances include Stock Water Well Allowances, Stock Water Pit Allowances, and Stock Water Tank Served by Surface Water Allowances.

2. A Stock Water Well Allowance may be sourced from either Wells or Developed Springs.

3. A Stock Water Pit Allowance may be sourced from Groundwater seepage or a non-perennial stream.

4. A Stock Water Tank Served by Surface Water Allowance may be sourced from a perennial or non-perennial stream.

5. Before appropriating water for a Stock Water Well, approval from the Engineer is required. The Engineer may approve a Stock Water Well Allowance if:

a. the Well construction complies with the requirements of Section 1-1-111 of this Ordinance;

b. the maximum flow rate is 35 gallons per minute or less;

c. the maximum annual diverted volume is 2.4 acre-feet or less;

d. the means of diversion is a single Well or Developed Spring;

e. the well is not physically connected to a Home or Business;

f. the means of diversion includes Well Shaft Casing; and

g. Stock Water use associated with the Appropriation is dispensed using Stock Tanks.

6. Before appropriating water for a Stock Water Pit Allowance, approval from the Engineer is required. The Engineer can approve a Stock Water Pit allowance if:

a. the capacity of the Stock Water Pit is 5 acre feet or less;

b. the maximum annual appropriated volume is 10 acre feet or less;

c. the Stock Water Pit Allowance is sourced from Groundwater seepage, a non-perennial stream, or both, provided that a ditch or pipeline is not used;

d. the Stock Water Pit Allowance is constructed on and accessible to a parcel of land 40 acres or larger and owned or under control of the applicant; and

e. the construction of the means of diversion complies with Tribal Ordinance 87(A) (Aquatic Lands Conservation Ordinance).

7. Before appropriating water for a Stock Water Tank Served by Surface Water Allowance, approval from the Engineer is required. The Engineer can approve a Stock Water Tank Served by Surface Water Allowance if:

a. the maximum flow rate is 10 gallons per minute or less;

b. the combined maximum annual diverted volume is 2.4 acre-feet or less;

c. the means of conveyance is a fully contained pipe or hose. Open ditch conveyance is not allowed;

d. the construction of the means of diversion complies with Tribal Ordinance 87(A) (Aquatic Lands Conservation Ordinance); and

e. Stock Water associated with the appropriation is dispensed using one or more Stock Tanks.

8. An applicant must file a completed Application for a Stock Water Allowance with the Office of the Engineer and obtain approval from the Engineer before developing and appropriating water for Stock Water use pursuant to this Section. A complete application shall also include:

a. proof that the applicant has the possessory interest or the written consent of the Person(s) with possessory interest in the property where the point of diversion is located and where the water is to be put to beneficial use, and property rights in the diversion Works; and

b. a site-map that shows, in addition to the requirements of Section 1-1-110(12) of this Ordinance, the location of all proposed Stock Water Allowance development(s) including latitude and longitude in decimal

degrees. The map must include the entire property boundaries where the Stock Water Allowance development is proposed, or a minimum radius of 500 feet from any proposed Stock Water Allowance development, whichever is greater, and include any of the following that are in existence or are proposed by the applicant:

i. well(s), Pits and Stock Tanks including purpose of each;

ii. buildings on the site, including identification of Well connections;

iii. property lines and ownerships; and

iv. means of conveyance, water right points of diversions, and surface water features.

9. Upon receipt of a completed application form complying with subsection (8) of this Section, the Office of the Engineer shall date stamp the application form.

10. The Engineer or Designee shall review the application within 30 days of the date stamped on the application pursuant to subsection (9) of this Section, and within that timeframe may either approve the application or return a defective application to the applicant with a written explanation of the defects. If a corrected application is submitted within 30 days of its return by the Office of the Engineer, no new filing fee shall be required. Upon receiving a corrected application, which shall be date stamped by the Office of the Engineer upon receipt, the Engineer or Designee has 30 days from the date stamped on the corrected application pursuant to this subsection (10) to approve or deny the application.

11. If the Engineer or Designee does not approve or return an application within 30 days of the date stamped on the application pursuant to subsection (9) of this Section, the application shall be deemed approved. If the Engineer or Designee does not approve or deny a corrected application within 30 days of the date stamped on the application pursuant to subsection (10) of this Section, the application shall be deemed approved.

12. Once an applicant meets the requirements of subsections (5) through (9) of this Section, as applicable, and an application is approved by the Engineer or Designee under subsection (10) or (11) of this Section, the Office of the Engineer shall issue an authorization to develop a Stock Water Allowance. The authorization to develop a Stock Water Allowance entitles an Appropriator to construct the authorized type of Stock Water Allowance within, but not to exceed, one year of the date of approval.

13. An Appropriation Right for a Stock Water Allowance becomes valid and final when, within 120 days of completing the diversion Works and putting the water to beneficial use, an Appropriator files a Stock Water Allowance completion form accurately and completely. The completion form for a Stock Water Well Allowance must include a copy of the companion Well Log Report(s), and must identify the as-built attributes of any Well, Pit or Stock Tank constructed. If the as-built attributes are less than or equal to the size of the Allowance for which

the applicant originally applied, a Certificate of Stock Water Allowance shall be issued for the as-built attributes. No Certificate of Stock Water Allowance may be issued if the as-built system exceeds the volumes or flow rates set forth in subsections (5), (6) or (7) of this Section, as applicable.

14. If an Appropriation Right for a Stock Water Allowance is revoked by the Board pursuant to the provisions of Section 3-1-112(3) of this Ordinance, or is determined to be abandoned pursuant to the provisions of Sections 2-1-111 and 2-1-112 of this Ordinance, or is voluntarily abandoned, the Appropriator shall, within 180 days of the revocation or voluntary abandonment, fill in and rehabilitate any Pits, Pit-dams, Constructed Ponds, or Reservoirs associated with the revoked or abandoned Appropriation Right for a Stock Water Allowance, and shall, within 180 days of the revocation or voluntary abandonment, seal any tanks or supply lines associated with the revoked or abandoned Appropriation Right for a Stock Water Allowance.

2-2-117. Appropriation Rights for Domestic Allowances for Homes and Businesses; process for application, review, and issuance.

1. Appropriation Rights for Domestic Allowances include Individual Domestic Allowances, Shared Domestic Allowances and Development Domestic Allowances. An Individual Domestic Allowance may be used only to serve an individual Home or Business. A Shared Domestic Allowance may be used only to serve no less than two and no more than three Homes and/or Businesses. A Development Domestic Allowance may be used only to serve a Development.

2. A Domestic Allowance may be sourced from either Wells or Developed Springs.

3. A Domestic Allowance may not be used to fill or maintain Pits, Pit-Dams, Constructed Ponds, or Reservoirs.

4. Before appropriating water for Domestic Use for an Individual Domestic Allowance, approval from the Engineer is required. The Engineer may approve an Individual Domestic Allowance if:

a. the Well construction complies with the requirements of Section 1-1-111 of this Ordinance;

b. the maximum flow rate is 35 gallons per minute or less;

c. the maximum annual diverted volume is 2.4 acre-feet or less;

d. the means of diversion is a single Well or Developed Spring;

e. the Well is physically connected to and serves one and only one Home or Business;

f. the means of diversion includes Well Shaft Casing;

g. Stock Water use associated with the allowance is dispensed using Stock Tanks; and

h. the amount of land to be irrigated by the allowance is 0.7 acres or less.

5. Before appropriating water for a Shared Domestic Allowance, approval from the Engineer is required. The Engineer may approve a Shared Domestic Allowance if:

a. the Well construction complies with the requirements of Section 1-1-111 of this Ordinance;

b. the maximum flow rate is 35 gallons per minute or less;

c. the maximum annual diverted volume is 2.4 acre-feet or less;

d. the means of diversion is a single Well or Developed Spring;

e. the Well is physically connected to not less than two and not more than three Homes and/or Businesses that are not a Development;

f. the means of diversion includes Well Shaft Casing;

g. Stock Water use associated with the allowance is dispensed using Stock Tanks;

h. if the Well is connected to two homes and/or businesses, the amount of land to be irrigated with the allowances is 0.5 acres or less. If the well is connected to three Homes and/or Businesses, the amount of land to be irrigated by the allowance is 0.75 acres or less; and

i. the application includes a copy of the Shared Well Agreement signed by all parties.

6. Before appropriating water for a Development Domestic Allowance, approval from the Engineer is required. The Engineer may approve a Development Domestic Allowance if:

a. the Well construction complies with the requirements of Section 1-1-111 of this Ordinance;

b. the maximum flow rate from each Well or Developed Spring is 35 gallons per minute or less;

c. the combined maximum annual diverted volume from all wells and Developed Springs is 10 acre-feet or less;

d. Measurement devices approved by the Engineer and capable of recording cumulative volumes are installed on each Well or Developed Spring;

e. the means of diversion is one or more Wells and/or Developed Springs not to exceed one Well or Developed Spring per Home or Business within the Development;

f. the means of diversion includes Well Shaft Casing;

g. the allowance is physically connected to multiple Homes and/or Businesses that together constitute a Development;

h. Stock Water use associated with the allowance is dispensed using Stock Tanks;

i. the amount of land to be irrigated with the allowances is limited to 0.25 acres or less for each Home or Business within the Development;

j. the application includes a copy of any Shared Well Agreement(s) signed by all parties, if applicable;

k. the water supply requirements for all Homes and Businesses within the Development are satisfied by the allowance; and

l. the applicant includes a copy of the development plan, plat, or equivalent as required by the associated county government.

7. The owner(s) or operator(s) of a Development Domestic Allowance must submit a Development Domestic Allowance Water Measurement Report by March 31st of the year following the year covered by the report.

8. An applicant must file a completed Application for a Domestic Allowance and obtain approval from the Engineer before drilling any Well(s) or developing any spring(s) and putting water to use pursuant to this Section. A completed application shall also include:

a. proof that the applicant has a possessory interest or the written consent of the Person(s) with possessory interest in the property where the point of diversion is located and where the water is to be put to beneficial use, and property rights in the diversion Works; and

b. a site-map that shows, in addition to the requirements of Section 1-1-110(12) of this Ordinance, the location of all proposed Wells and Developed Springs including latitude and longitude in decimal degrees. The map must include the entire property boundaries where the Well associated with the Domestic Allowance is proposed, or a minimum of 500 feet in radius around the proposed Well(s) or Developed Spring(s), whichever is greater, and include any existing or proposed by the applicant:

i. Well(s) and Stock Tanks, including purpose of each well;

ii. sewage facilities including septic tanks and drainfields;

iii. buildings on the site, including identification of Well connections;

iv. property lines and ownerships;

v. irrigated acres per lot or unit Well(s); and

vi. means of conveyance, water right points of diversions, and surface water features.

9. Upon receipt of a completed application form complying with subsection (8) of this Section, the Office of the Engineer shall date stamp the application form.

10. The Engineer or Designee shall review the application within 30 days of the date stamped on the application pursuant to subsection (9) of this Section, and within that timeframe may either approve the application or return a defective application to the applicant, together with a written explanation of the defects.

If a corrected application is submitted within 30 days of its return by the Office of the Engineer, no new filing fee shall be required. Upon receiving a corrected application, which shall be date stamped by the Office of the Engineer upon receipt, the Engineer or Designee has 30 days from the date stamped on the corrected application pursuant to this subsection (10) to approve or deny the application.

11. If the Engineer or Designee does not approve or return an application within 30 days of the date stamped on the application pursuant to subsection (9) of this Section, the application shall be deemed approved. If the Engineer or Designee does not approve or deny a corrected application within 30 days of the date stamped on it pursuant to subsection (10) of this Section, the application shall be deemed approved.

12. Once an applicant meets the requirements of subsections (4), (5), or (6) of this Section, as applicable, as well as the requirements of subsection (8) of this Section, and an application is approved by the Engineer or Designee under subsection (10) or (11) of this Section, the Office of the Engineer shall issue an authorization to develop a Domestic Allowance. The authorization to develop a Domestic Allowance entitles an Appropriator to construct the authorized type of Domestic Allowance within, but not to exceed, one year of the date of approval.

13. An Appropriation Right for a Domestic Allowance becomes valid and final when, within 120 days of completing the Well(s) or Developed Spring(s) and putting the water to beneficial use, an Appropriator files a Domestic Allowance completion form accurately and completely. The completion form must also include a copy of the companion Well Log Report(s), and must identify the as-build attributes of any Well or Stock Tank constructed. If the as-built attributes are less than or equal to the size of the allowance for which the applicant originally applied, a Certificate of Domestic Allowance shall be issued for the as-built attributes. No Certificate of Domestic Allowance may be issued if the as-built system exceeds the volumes or flow rates set forth in subsections (4), (5) or (6) of this Section, as applicable.

14. If an Appropriation Right for a Domestic Allowance is revoked by the Board pursuant to the provisions of Section 3-1-112(3) of this Ordinance, or is determined to be abandoned pursuant to the provisions of Sections 2-1-111 and 2-1-112 of this Ordinance, or is voluntarily abandoned, the Appropriator shall, within 180 days of the revocation or voluntary abandonment, follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202, MCA, or any successor procedures, standards and rules that are promulgated in State law, for any Well associated with the revoked or abandoned Appropriation Right for a Domestic Allowance.

2-2-118. Process for development of new uses from Flathead System Compact Water.

1. Subject to the terms and conditions of the Compact, the Tribal Council or its delegate, or any Person

with the written consent of the Tribal Council or its delegate, may apply to utilize Flathead System Compact Water for any beneficial use within the Reservation by submitting a correct and complete application to the Office of the Engineer.

2. A correct and complete application for a use of Flathead System Compact Water shall contain the following information:

a. the name of the applicant;

b. a description of the proposed purpose of use;

c. the point of diversion

d. the means of diversion

e. the place of use;

f. the flow rate, volume diverted, and volume consumed;

g. the means of conveyance;

h. the period of use;

i. the duration or term of the proposed use;

j. a project plan, including a proposed completion period and, if applicable, a list of water rights to be used in conjunction with or to be replaced by the proposed use of Flathead System Compact Water for which the application is being filed;

k. a map depicting all the features described in this subsection (2); and

l. if the applicant is not the Tribal Council or its delegate, written authorization from the Tribal Council or its delegate to submit the application.

3. Upon receipt of a completed application for the use of Flathead System Compact Water, the Office of the Engineer shall date stamp it.

4. Staff shall analyze the application for the use of Flathead System Compact Water within 180 days of the date stamped on the application pursuant to subsection (3) of this Section using the tools and techniques identified in Section 2-2-107(2) of this Ordinance to determine compliance with the criteria identified in Section 2-2-102(2)(b) through (f) of this Ordinance.

5. All information relied upon by Staff in analyzing an application pursuant to this Section shall be documented in the application file.

6. Staff, using information from the application as well as their own compilation of independent resources and analysis, shall draft a recommended decision with findings of fact and conclusions of law determining whether

the application satisfies the criteria set forth in Section 2-2-102(2)(b) through (f) of this Ordinance.

7. If the recommended decision is to grant the application, a summary of the application and the recommended decision shall be publicly noticed by the Office of the Engineer once via legal notice in a newspaper of general circulation on the Reservation and shall be posted on the Board's website for a period of 45 days from the date the recommended decision is issued, during which time objections may be filed with the Engineer. If no objections are filed, or if all filed objections are withdrawn prior to being ruled upon, the application shall be granted by the Engineer within 10 days after expiration of the time for filing objections, or after the unconditional withdrawal of the last objection, whichever date is later.

8. If the recommended decision is to deny the application, the applicant may appeal the recommended decision to the Engineer pursuant to the provisions of Section 2-2-109 of this Ordinance.

9. If the recommended decision is to grant the application with conditions, the application shall be noticed to the public pursuant to the provisions of subsection (7) of this Section unless the applicant withdraws the application within 30 days of the issuance of the recommended decision or appeals the recommended decision to the Engineer pursuant to the provisions of Section 2-2-109 of this Ordinance. The application filing fee shall not be refunded upon withdrawal.

10. To be valid for processing, an objection to an application for the use of Flathead System Compact Water must assert and describe how the proposed development of Flathead System Compact Water fails to comply with one or more of the criteria set forth in Section 2-2-102(2)(b) through (f) of this Ordinance. Any such valid objection shall be resolved pursuant to the procedures set forth in Sections 2-2-110 through 2-2-112 of this Ordinance, provided however, that the burden of proof in the hearing before the Engineer or Designee shall be on the objector to prove by a preponderance of the evidence that the application fails to comply with one or more of the criteria set forth in Section 2-2-102(2)(b) through (f) of this Ordinance.

11. Unless an objection to the application is sustained, the application shall be granted within 10 days of expiration of the time to appeal the decision relating to any objection or after the exhaustion of the objector's last appeal, whichever date is later.

12. The priority date of any use of Flathead System Compact Water is the date of the Tribes' Flathead System Compact Water right as set forth in Article III.C.1.c of the Compact.

2-2-119. Appropriation Rights for Non-consumptive Geothermal Heating or Cooling Exchange Wells.

1. Appropriation Rights may be issued for non-consumptive geothermal heating or cooling exchange Wells with a maximum appropriation of 350 gallons a minute or less if all of the water extracted is returned without

delay to the same source aquifer, if the distance between the extraction well and both the nearest existing well and any hydraulically connected surface waters is more than twice the distance between the extraction well and the Injection Well, and if all Well construction complies with the requirements of Section 1-1-111 of this Ordinance. Before appropriating water for a use described in this subsection (1), approval of the Engineer is required.

2. An applicant must file a completed application form and obtain approval from the Engineer before drilling any Well(s) or developing any spring(s) and putting water to use pursuant to this Section. A completed application shall also include:

a. proof that the applicant has the possessory interest or the written consent of the Person(s) with possessory interest in the property where the point of diversion is located and where the water is to be put to beneficial use, and property rights in the diversion Works; and

b. a site-map showing the location of all proposed wells including latitude and longitude in decimal degrees. The map must also include the entire property boundaries where the Wells are proposed, or a minimum of 500 feet in radius around the proposed Well(s) or spring(s), whichever is greater, and include any of the following that exist or are proposed by the applicant:

i. well(s) including purpose of each well;

ii. sewage facilities including septic tanks and drainfields;

iii. buildings on the site, including identification of Well connections;

iv. property lines and ownerships;

v. irrigated acres per lot or unit well(s); and

vi. means of conveyance, water right points of diversions, and surface water features.

3. Upon receipt of a completed application form complying with subsection (2) of this Section, the Office of the Engineer shall date stamp the application form.

4. The Engineer or Designee shall review the application within 45 days of the date stamped on the application pursuant to subsection (3) of this Section, and within that timeframe may either approve the application or return a defective application to the applicant, together with a written explanation of the defects. If a corrected application is submitted within 30 days of its return by the Office of the Engineer, no new filing fee shall be required. Upon receiving a corrected application, which shall be date stamped by the Office of the Engineer upon receipt, the Engineer or Designee has 30 days from the date stamped on the corrected application pursuant to this subsection (4) to approve or deny the application.

5. If the Engineer or Designee does not approve or return an application within 45 days of the date stamped on the application pursuant to subsection (3) of this Section, the application shall be deemed approved. If the Engineer or Designee does not approve or deny a corrected application within 30 days of the date stamped on this application pursuant to subsection (4) of this Section, the application shall be deemed approved.

6. Once an applicant meets the requirements of subsection (1) of this Section and the application is approved pursuant to subsection (4) or (5) of this Section, as applicable, the Engineer shall issue an authorization to develop the Appropriation Right for a Heating/Cooling Exchange Well.

7. An Appropriation Right for a Heating/Cooling Exchange Well becomes valid and final when, within 120 days of completing the Well(s) or Developed Spring(s) and putting the water to beneficial use, an Appropriator files a Heating/Cooling Exchange completion form accurately and completely. The completion form must also include a copy of the companion Well Log Report(s) for the extraction Well and the Injection Well.

8. If an Appropriation Right for a Heating/Cooling Exchange Well is revoked by the Board pursuant to the provisions of Section 3-1-112(3) of this Ordinance, or is determined to be abandoned pursuant to the provisions of Sections 2-1-111 and 2-1-112 of this Ordinance, or is voluntarily abandoned, the Appropriator shall, within 180 days of the revocation or voluntary abandonment, follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202, MCA, or any successor procedures, standards and rules that are promulgated in State law, for any Well associated with the revoked or abandoned Appropriation Right for a Heating/Cooling Exchange Well.

2-2-120. Temporary Emergency Appropriations.

1. A Temporary Emergency Appropriation may be made without prior approval from the Board, but the use must cease immediately when the water is no longer required to meet the emergency.

2. A Temporary Emergency Appropriation does not include the use of water for the ordinary operation and maintenance of any trade or business, including but not limited to agricultural production.

3. Within 60 days after the cessation of a Temporary Emergency Appropriation, the Appropriator shall notify the Board of the use to which the water was put, the dates of use, and the estimated amount of water used.

4. Except as set forth in subsection (5) of this Section, a Temporary Emergency Appropriation may not include the use of Enclosed Storage.

5. When the Temporary Emergency Appropriation is made by a local governmental fire agency organized under Title 7, chapter 33, MCA, or applicable Tribal law, and the Temporary Emergency Appropriation is used only for emergency fire protection, the Temporary Emergency Appropriation may include enclosed storage.

2-2-121. Short-term use of a portion of the Tribal Water Right for road construction or dust abatement. The Tribes, or a Person with the written consent of the Tribes, may use a portion of the Tribal Water Right for road construction or dust abatement purposes, without the prior approval of the Board, subject to the following provisions:

1. For uses of 20,000 gallons or less per day from a single source of supply, no notice is required;

2. For uses greater than 20,000 gallons per day and less than 60,000 gallons per day from a single source of supply, a notice must be posted at the site of the diversion or withdrawal for the entire period during which water is being diverted or withdrawn. The notice posted shall be clearly legible and visible and provide the following information:

a. source of water;

b. purpose of use;

c. starting and ending date of diversion;

d. place of use;

e. diversion flow rate;

f. maximum volume of water to be diverted or withdrawn per day; and

g. name and contact information for the user of the water and for the Board.

3. For uses greater than 60,000 gallons per day from a single source of supply, the Board must be notified at least 10 days but not more than 45 days in advance of the initial use of the water. Notice must be posted at the site of the diversion or withdrawal, as provided in subsection (2) of this Section. Notification to the Board must provide the following information:

a. source of water;

b. legal description of the point of diversion or withdrawal;

c. place of use;

d. map showing preceding three items;

e. purpose of use;

f. starting and ending date of use;

g. diversion flow rate;

h. maximum volume of water to be diverted or withdrawn per day; and

i. name and contact information for the user.

4. The diversion or withdrawal of water pursuant to this Section shall not adversely affect any legal use

of water in existence as of the date of the diversion or withdrawal; and

5. If notified that the diversion or withdrawal of water pursuant to this Section is adversely affecting any legal use of water in existence as of the date of the diversion or withdrawal, the user will immediately cease diversion or withdrawal from that source of supply. To resume the diversion or withdrawal, the user may move the diversion or withdrawal to another source of supply, or may satisfy the Board and the holder(s) of the affected legal use(s) of water in existence as of the date of the diversion or withdrawal that use will not cause adverse effects.

2-2-122. Short-term use of an appropriation right that is not part of the Tribal Water Right for road construction or dust abatement.

1. An Appropriator may lease, for a term not to exceed 90 days, all or part of an Appropriation Right or Existing Use that is not part of the Tribal Water Right for road construction or dust abatement without the prior approval of the Board, subject to the requirements of this Section. The lease agreement must include the following information:

a. the name and address of the lessee;

b. the name of the owner of the Appropriation Right or Existing Use;

c. the number of the Appropriation Right or Existing Use;

d. the purpose of use of water for which the lease is being made;

e. the source of water to be appropriated;

f. the starting and ending date of the proposed use of water;

g. the proposed point of diversion;

h. the proposed place of use;

i. the diversion flow rate and volume of water to be used during the period of use; and

j. a description of how the prior use of water will be reduced to accommodate the temporary change of use of the Appropriation Right or Existing Use, including the number and location of acres to be removed from irrigation, if applicable.

2. A short-term lease of an Appropriation Right or Existing Use under this Section may not exceed 60,000 gallons a day or the amount of the Appropriation Right or Existing Use, whichever is less. Any combination of short-term leases cannot exceed 120,000 gallons a day for one project.

3. Except as provided in subsection (7) of this Section, the following information must be submitted to the Board at least 2 days prior to the use of water by a lessee under this Section:

a. a copy of the Publication notice or copies of the individual notice required under subsection (4) of this Section;

b. a copy of the lease agreement; and

c. for a combination of short-term leases greater than 60,000 gallons a day for one project, an analysis by the lessee of any potential adverse effects and a description of planned actions to mitigate any potential adverse effects to Appropriators in the area of the proposed point of diversion.

4. Except as provided in subsection (7) of this Section, the lessee of an Appropriation Right or Existing Use under this section shall, 30 days prior to the use of the water, publish a notice of the proposed use of water once in a newspaper of general circulation in the area of the diversion or mail individual notice to potentially affected Appropriators in the area of the proposed point of diversion. The published notice or the individual notice must contain the information listed in subsections (1)(a) through (1)(j) and (3)(c) of this Section.

5. Complaints regarding temporary use

a. an Appropriator, whether the water right is prior or subsequent in priority to the short-term lease acquired by a Person under this Section, who cannot satisfy in full the Appropriator's right during the time that the short-term lessee is diverting water, may make a complaint to the Engineer pursuant to Section 3-1-102 of this Ordinance and cause the short-term lessee's diversion to be discontinued.

b. the diversion is discontinued until the complaining Appropriator's water right is satisfied or until the lessee establishes to the Engineer that the discontinuance has had no effect on the complaining Appropriator's water right. Upon establishment that discontinuance has not had an effect, the Engineer shall enter an order allowing the diversion to continue.

6. This Section does not limit the remedies available to an Appropriator to enjoin or to seek damages from a Person appropriating water under this Section.

7. a. a consolidated city-county or a county or an incorporated city or town is not subject to the requirements of subsections (3)(a) and (4) of this Section when conducting dust abatement that was not scheduled or contracted for 30 days or more prior to the use of the water.

b. a consolidated city-county or a county or an incorporated city or town that does not publish notice as provided in subsection (4) of this Section shall post a copy of the lease agreement at the point of diversion at least 24 hours prior to and during the time that water is diverted.

2-2-123. Wetland Protective Appropriation Rights.

1. Pursuant to the provisions of Sections 2-2-101 et seq. of this Ordinance, a Wetland Protective

Appropriation Right for a Natural Wetland or Restored Natural Wetland may be issued, subject to the following limitations:

a. except as authorized by Appropriation Rights issued pursuant to Section 1-1-107(1)(k) of this Ordinance, irrigation return flows may not be used as a source for an Appropriation Right issued pursuant to this Section.

b. No Wetland Protective Appropriation Right shall be issued for any Wetland using Pits, Pit-dams, or Constructed Ponds.

c. No Wetland Protective Appropriation Right shall be issued for any Wetland occurring solely as a result of seepage from irrigation reservoirs, canals, laterals or ditches.

d. No Wetland Protective Appropriation Right shall be used for any other purpose and shall not be changed to another purpose.

2. Wetlands eligible for Wetlands Protective Appropriation Rights are:

a. Those Wetlands identified on the map of Wetlands eligible for Wetlands Protective Appropriations Rights (available from the Office of the Engineer); or

b. Those Wetlands not identified on the Map if:

i. the proposed use is a Restored Natural Wetland;

ii. the applicant provides a site-specific Wetlands delineation, using any delineation method approved by the Engineer, that includes:

(1) the total number of acres and a detailed map showing the proposed boundary of the Wetland for which the Wetland Protective Appropriation Right is being applied; and

(2) an identification of the Wetlands delineation method used, along with supporting field data.

2-2-124. Wetland Quantified Appropriation Rights.

1. Pursuant to the provisions of Sections 2-2-101 et seq. of this Ordinance, an Appropriations Right or Change in Use authorization to divert, impound, or withdraw surface water or Groundwater for a Wetland purpose may be issued.

2. All Wetlands that utilize man-made diversions, impoundments, withdrawals, excavations, or other artificial means for the purposes of Appropriation for either all or a portion of a Wetland water supply in excess of a Natural Wetland water supply or Restored Natural Wetland water supply shall obtain, in advance of Appropriation, an Appropriation Right or Change in Use authorization for that Wetland purpose.

3. In addition to the information required by Sections 1-1-110 and 2-2-104 of this Ordinance, an

application for an Appropriation Right or Change in Use authorization pursuant to this section shall include the following information:

a. A delineation of pre-project existing Wetlands and post-project Wetlands using a Wetland delineation method approved by the Engineer. The delineation shall describe the following pre-project and post-project Wetland attributes:

i. the outer Wetland boundary and area in acres;

ii. the boundaries of permanently inundated areas, depth in feet, and area in acres;

iii. the boundaries of seasonally inundated areas, period of inundation, depth in feet, and area in acres;

iv. the boundaries of permanently saturated areas and area in acres;

v. the boundaries of seasonally saturated areas, period of saturation, and area in acres; and

vi. Wetland vegetation boundaries and area in acres.

b. The location and description of the manmade diversions, impoundments; withdrawals, excavations, or other artificial means for the purposes of Appropriation;

c. The flow rate and volume of water to be appropriated in monthly time steps; however, the Office of the Engineer may require a more frequent quantification time step;

d. The consumptive volume for each Wetland attribute delineated pursuant to Section 2-2-124(a) of this Ordinance in monthly time steps; however, the Office of the Engineer may require a more frequent quantification time step;

e. non-consumed water, including flow rate and volume estimates, and a description of return flows and their eventual destination and timing; and

f. the volume of Natural Wetland water supply, if applicable, in monthly time steps.

2-2-125. Notice of Trust Status Conversion for Lands with Appurtenant Water Rights Arising Under State Law Acquired by the Tribes. As provided for by the Compact, Article III.H, the following process shall be used to notify the Water Management Board of the transfer of Tribally-owned fee land to trust status:

1. Starting upon the Effective Date of the Compact, the Tribes may file a Trust Transfer form with the Board for any lands acquired by the Tribes with appurtenant Water Rights Arising Under State Law that have been taken into trust by the United States on behalf of the Tribes.

2. A copy of the deed transferring the fee land to trust status shall be attached to the form.

2-2-126. Water Management Board Adjustment of Priority Date Pursuant to Compact. Upon submission of a Trust Transfer form by the Tribes, the priority date of any Water Rights Arising Under State Law appurtenant

to land identified on the Trust Transfer form shall be adjusted by the Water Management Board to July 16, 1855. The Board shall cause the adjusted priority date to be entered into the Reservation water rights database identified in Section 1-1-108 of this Ordinance.

2-2-127. Tribal Utilization of Water Right with Adjusted Priority Date. Any water right whose priority date is adjusted pursuant to Section 2-2-126 of this Ordinance shall be subject to the following use conditions:

1. The water right must be used as historically used; or

2. Changes to the water right must be made pursuant to the provisions set for the in Article IV.B.4 of the Compact and Section 2-2-101 et seq. of this Law of Administration.

2-2-128. Public Water Supply Reporting Requirements

1. The following shall comply with the reporting requirements set forth in subsection (2) of this Section:

a. any new Public Water Supply System approved pursuant to this Ordinance;

b. any Public Water Supply System in existence prior to the effective date of this Ordinance whose authorized use is expanded pursuant to this Ordinance.

2. On an annual basis, any entity responsible for the operation of a Public Water Supply System identified in subsection (1) of this Section shall report to the Office of the Engineer the total volume by month of pumping or diversion of the Public Water Supply System.

## Chapter III Enforcement

3-1-101. Scope

1. The enforcement powers set forth in this Chapter apply to the resolution of disputes between Appropriators who are not served by the Flathead Indian Irrigation Project, or between any Appropriators who are not served by the FIIP and any water user(s) or holders of Existing Rights, if any, whose use of water is served by the FIIP. Disputes exclusively between or among users whose water is delivered by the FIIP shall remain subject to the oversight of the Project Operator and the Enforcement provisions of this Ordinance shall not apply. The powers and duties set forth in this Chapter, as they extend to uses of the Tribal Water Right within the FIIP, extend only to the resolution of disputes concerning the delivery of water to FIIP diversion facilities and shall not extend to the administration of that water in FIIP facilities or on lands served by the FIIP, which shall remain subject to the oversight of the Project Operator.

2. Nothing in this Chapter, or in the Ordinance, is intended to preclude a water user from working informally with other water users, any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance, or the Engineer, to resolve disputes or real-time water operation issues without recourse to the

provisions of this Chapter. A synopsis of all such resolutions between a water user and any Water Commissioner or the Engineer shall be reduced to writing, and dated, a copy of which shall be kept in the Office of the Engineer and available for public inspection. A synopsis of any such resolution between or among water users may be reduced to writing. Provided, however, that any water user not party to any such informal resolution who believes himself or herself to be injured by the informal resolution may seek redress by invoking the provisions of this Chapter, subject to the limitation concerning FIIP water use set forth in subsection (1) of this Section, to challenge the informal resolution.

3. Any of the timeframes set forth in Sections 3-1-102 through 3-1-107 of this Ordinance may be extended upon mutual agreement of the parties to any dispute.

3-1-102. Complaint to the Engineer Regarding Actions or Inactions Between Appropriators.

1. Subject to the limitation concerning FIIP water use set forth in Section 3-1-101(1) of this Ordinance, any Appropriator aggrieved by the action or inaction of any other Appropriator, or by any Person the Complainant believes is Wasting water to the detriment of a right to use water the Complainant possesses, may file a Complaint with the Engineer. Such Complaint must be submitted in writing and describe specifically the action or inaction being complained of and the justification for the Complaint.

2. Upon receipt of a Complaint, the Office of the Engineer shall date stamp it and return a copy to the Complainant along with a written statement indicating that informal resolution of the dispute between the Appropriators, or between an Appropriator and a Person accused of Wasting water, may provide a more timely and cost-effective remedy than having the Complaint adjudicated by the Engineer.

3. Within 3 days of the receipt of the Complaint, the Office of the Engineer shall serve a copy of it on the Appropriator or other Person whose action or inaction is being complained of (the "Respondent"), and shall post notice of the Complaint on the Board's website. The notice to the Respondent shall include a written statement indicating that informal resolution of the dispute between the Complainant and the Respondent may provide a more timely and cost-effective remedy than having the petition adjudicated by the Engineer.

3-1-103. Resolution of Complaint.

1. No later than 15 days after the provision of notice of the Complaint to the Respondent, pursuant to Section 3-1-102(3) of this Ordinance, the Engineer or Designee shall hold a hearing on the Complaint, provided, however that the Engineer or Designee may take an additional 10 days before holding the hearing to perform such independent investigation into the Complaint as the Engineer or Designee deems appropriate. At such time, both the Complainant and the Respondent shall explain their positions concerning the matter complained of. All

evidence that, in the opinion of the Engineer or Designee, possesses probative value shall be admitted, including hearsay, if it is the type of evidence commonly relied upon by reasonably prudent Persons in the conduct of their normal business affairs. Rules of privilege recognized by law shall be given effect. Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded.

2. A decision by the Engineer or Designee on the Complaint shall be made in writing within 7 days after the completion of the hearing.

3. The decision of the Engineer or Designee may include an award of declaratory relief, and/or the imposition of conditions on the use or exercise of a water right. Such conditions may include, but are not limited to, instructions regarding the proper delivery of water, the installation of measuring devices, the construction of suitable ditches to carry the return waters from any ditch or lands to the main stream or proper waste way, or the mandate of structural changes to diversion structures.

4. Any Complainant or Respondent dissatisfied with the final decision of the Engineer or Designee may appeal to the Board (and become an Appellant) and obtain review of the Engineer's or Designee's decision. A notice of appeal to the Board must be received by the Board within 30 days of the issuance of the Engineer's or Designee's written decision. The decision of the Engineer or Designee shall not be stayed during the pendency of the appeal unless the Board expressly orders such a stay upon motion of the Complainant or Respondent.

3-1-104. Appeal to the Board.

1. Upon receipt of a notice of appeal pursuant to Section 3-1-103(4) of this Ordinance, or any other Section of this Ordinance that provides for appeal to the Board pursuant to the provisions of this Section, the Board, acting through the Office of the Engineer, shall date stamp the notice and return a copy to the Appellant. Within three days of receipt of the notice of appeal, the Board, acting through the Office of the Engineer, shall serve a copy of the notice of appeal on the other party to the dispute (who becomes the Appellee).

2. Either party to the appeal may elect to have oral argument prior to the resolution of the appeal. The Appellant must request oral argument at the time of the filing of the notice of appeal or the Appellant's right to oral argument is waived. The Appellee must request oral argument within 10 days of the Appellee's receipt of the notice of appeal pursuant to subsection (1) of this Section, or the Appellee's right to oral argument is waived. If either party to the appeal requests oral argument, such argument must be held within 60 days of the filing of the notice of appeal, or within 30 days of the receipt of evidence or argument pursuant to subsection (3) or (4) of this Section, whichever date is later.

3. Within 60 days from the filing of the notice of appeal, or any extended period of time, not to exceed

60 days, granted by the Board, the Appellant and Appellee may each submit additional factual evidence and legal argument concerning the appeal to the Board and shall serve copies of the same on the other party to the dispute.

4. Either party to the appeal shall have 60 days from the date of receipt of the evidence or argument served pursuant to subsection (3) of this Section, or any extended period of time granted by the Board, not to exceed 60 days, to respond in writing to the evidence and argument submitted by the other party to the dispute pursuant to subsection (3) of this Section.

5. If oral argument is held, the argument shall be recorded electronically and an official record maintained.

6. A decision by the Board on the appeal shall be made in writing within 60 days after the completion of oral argument or, if the right to oral argument is waived, within 60 days after the deadline for the submission of evidence and argument pursuant to subsections (3) and (4) of this Section, whichever is later. The written decision shall set forth the ruling of the Board along with a statement of the reasons therefor.

7. In ruling on the appeal, the Board may sustain the decision of the Engineer or Designee, may overturn that decision and set aside any relief ordered by the Engineer or Designee, or may remand the matter to the Engineer or Designee for such further proceedings as may be specified in the Board's written decision.

3-1-105. Petition to the Engineer by Any Appropriator Aggrieved by Actions or Inactions of a Water Commissioner.

1. Any Appropriator aggrieved by the action or inaction or written directive from any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance, may petition the Engineer for relief (and become a Petitioner). Such petition must be submitted in writing and describe with particularity the action, inaction or directive giving rise to the petition and the justification for the petition.

2. Upon receipt of a petition, the Office of the Engineer shall date stamp it and return a copy to the Petitioner along with a written statement indicating that informal resolution of the dispute between the Petitioner and the Water Commissioner may provide a more timely and cost-effective remedy than having the petition adjudicated by the Engineer.

3. Within 3 days of the date stamped on the petition pursuant to subsection (2) of this Section, the Office of the Engineer shall serve a copy of it on the Water Commissioner whose action, inaction or written directive is being petitioned against, and shall post notice of the Petition on the Board's website.

3-1-106. Resolution of Petition.

1. A Petitioner may elect to have the Petition decided on the record after submission of additional

evidence and argument, or after hearing. If a Petitioner elects to have a hearing, that request must be made at the same time as the filing of the Petition or the right to a hearing is waived.

2. The Water Commissioner may elect to have the Petition decided after a hearing. The request for a hearing must be made within 5 days of the Water Commissioner's receipt of notice of the Petition pursuant to Section 3-1-105(3) of this Ordinance or the Water Commissioner's right to a hearing is waived.

3. If either the Petitioner or the Water Commissioner elects to have the Petition resolved after a hearing, the Engineer or Designee shall hold a hearing on the Petition no later than 14 days after the filing of the Petition, or within 14 days of the expiration of the time for the submission of evidence or argument pursuant to subsection (5) of this Section, whichever date is later; provided, however that the Engineer or Designee may take an additional 10 days before holding the hearing to perform such independent investigation into the petition as the Engineer or Designee deems appropriate.

4. Within 5 days from the filing of the Petition, or any extended period of time, not to exceed 5 days, granted by the Engineer, the Petitioner and Commissioner may each submit additional factual evidence and legal argument concerning the Petition to the Engineer or Designee and shall serve copies of the same on the other party to the dispute.

5. Either party to the dispute shall have 5 days from the date of receipt of the evidence or argument served pursuant to subsection (4) of this Section, or any extended period of time granted by the Engineer or Designee, not to exceed 5 days, to respond in writing to the evidence and argument submitted by the other party to the dispute pursuant to subsection (4) of this Section.

6. The Petitioner shall bear the burden of proof before the Engineer or Designee.

7. The hearing shall be recorded electronically and an official record maintained. All evidence that, in the opinion of the Engineer or Designee, possesses probative value shall be admitted, including hearsay, if it is the type of evidence commonly relied upon by reasonably prudent Persons in the conduct of their normal business affairs. Rules of privilege recognized by law shall be given effect. Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded.

8. A decision by the Engineer or Designee on the Petition shall be made in writing within 7 days after the completion of the hearing or, if the right to a hearing is waived, within 7 days after the deadline for the submission of evidence and argument pursuant to subsections (4) and (5) of this Section, whichever is later. If the individual who conducted the hearing becomes unavailable to the Office of the Engineer, a decision may be prepared by an individual who has read the record only if the demeanor of witnesses is considered immaterial by all parties;

if any party considers the demeanor of any witness to be material to the resolution of the petition, a new hearing must be held.

9. The decision of the Engineer or Designee may include an award of declaratory relief, and/or the imposition of conditions on the use or exercise of an Appropriation Right or Existing Use. Such conditions may include, but are not limited to, the installation of measuring devices, the construction of suitable ditches to carry the return waters from any ditch or lands to the main stream or proper waste way, or the mandate of structural changes to diversion structures.

10. Any Petitioner or Commissioner dissatisfied with the final decision of the Engineer or Designee may appeal to the Board (and become an Appellant) and obtain review of the Engineer's or Designee's decision. A notice of appeal to the Board must be received by the Board within 30 days of the issuance of the Engineer's or Designee's written decision.

3-1-107. Appeal to the Board from a Decision on a Petition. The process for appeal to the Board of the Engineer's or Designee's decision on a Petition shall be as set forth in Section 3-1-104 of this Ordinance.

3-1-108. Appeal from a Decision of the Board. The process for appeal from a decision of the Board issued pursuant to Section 3-1-104 of this Ordinance shall be as set forth in Section 2-2-112 of this Ordinance.

3-1-109. Emergency Enforcement Powers of the Engineer. In an Emergency, the Engineer, or any Staff who is so directed by the Engineer, or any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance, shall have the authority to lock, remove, render inoperative, shut down, close, seal, cap, modify, or otherwise control methods of diversions and withdrawals, and obstructions to the flow of water, subject to expedited appeal to the Board by the affected Person, as provided in Section 3-1-110 of this Ordinance.

3-1-110. Additional Enforcement Powers of the Engineer.

1. The Engineer, or any Staff who is so directed by the Engineer, or any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance, may enter upon lands on the Reservation with reasonable notice to the owner or occupant, to investigate and inspect methods of diversion, withdrawal, and other activities affecting water quantity, to install measuring devices at the expense of the water user on surface and Groundwater diversions for the purpose of enforcing and administering this Ordinance, to monitor water use, water quality, and diversion structures.

2. The Engineer, or any Staff who is so directed by the Engineer, or any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance, may take action to prevent the Illegal use of water, including, but not limited to the temporary decommissioning of head gates or other diversion Works.

3. The Engineer may issue written notices of violation to Appropriators and to Illegal users of water for violations of this Ordinance or of the terms and conditions of any Appropriation Right or Existing Use or of any lawful order of the Engineer or the Board or any action or directive of any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance.

4. Any notice issued pursuant to subsection (3) of this Section shall specify the particular violation or violations, the step(s) to be taken to come into compliance, and identify a reasonable time frame within which such steps are to be taken.

5. In the event of non-compliance with any written notice issued pursuant to subsection (3) of this Section within the specified time frame, the Engineer may move the Board to exercise its powers pursuant to Sections 3-1-112 and 3-1-113 of this Ordinance.

6. Upon receipt of any written recommendation, pursuant to Section 3-1-115(3) of this Ordinance, from any Water Commissioner, the Engineer or Designee may reject the recommendation or may issue notice of intent to hold a hearing to determine whether the imposition of such conditions identified in the recommendation is warranted. The process for the consideration and resolution of any such matter shall be as set forth in Sections 3-1-105 through 3-1-108 of this Ordinance, with the recommendation being treated as a petition, the Water Commissioner as the Petitioner and the affected water user(s) as Respondent(s).

3-1-111. Expedited Appeal to the Board in the Event of Certain Actions by the Engineer.

1. Any Appropriator whose use of water is affected by an action taken pursuant to Section 3-1-109 or 3-1-110(2) of this Ordinance may file a written notice of appeal with the Board (and become an Appellant). The notice of appeal must describe with particularity the action being appealed and the justification for the appeal.

2. The Board must immediately notify the Engineer of the filing of a notice of appeal pursuant to subsection (1) of this Section, and must hear the appeal within 10 days of the notice of appeal being filed.

3. If the Board finds in favor of the Appellant, it may award appropriate relief, including declaratory relief, but not monetary penalties against the Office of the Engineer or any employee thereof, including any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance, acting in either their professional or personal capacities.

3-1-112. Additional Enforcement Powers of the Board. Upon motion by the Engineer, and after notice to any affected Appropriator and the opportunity for all parties to be heard, the Board may:

1. Impose fines, as set forth in Section 3-1-113 of this Ordinance.

2. Impose conditions on the future use of any Appropriation Right to prevent further violation, but only

upon a finding that the holder of any such Appropriation Right is violating or has violated any provision of that Appropriation Right, or is violating or has violated any order issued by the Engineer or any directive of any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance concerning the use of that permit. The process for appeal from any Board decision imposing conditions pursuant to this Section shall be as set forth in Section 2-2-112 of this Ordinance.

3. Revoke or suspend any Appropriation Right, but only upon a finding that the holder of any such Appropriation Right is willfully violating or has willfully violated any provision of that Appropriation Right, or is willfully violating or has willfully violated any order issued by the Engineer concerning the use of that Appropriation Right. The process for appeal from any Board decision revoking or suspending a permit shall be as set forth in Section 2-2-112 of this Ordinance.

3-1-113. Fines.

1. The Board, pursuant to the provisions of this Section, may impose a fine not to exceed $1,000 per violation on any Person who fails to comply with the provisions of this Ordinance, including any written order of the Board or Engineer or written directive of any Water Commissioner.

2. If a Person is using water under the color of law, fines may only be imposed commencing on the day after the resolution of any appeal from the written order of the Board or Engineer or action or written directive of any Water Commissioner whose violation gives rise to the proposed imposition of fines, or the deadline for filing an appeal if no appeal is filed, after receipt of a written notice of violation pursuant to Section 3-1-111(2) of this Ordinance.

3. If a Person is using water Illegally, the Board may impose fines on that Person at any time commencing from the date of that Person's receipt of the notice of violation from the Engineer pursuant to section 3-1-111(3)(a) of this Ordinance, if the Illegal use is not ceased immediately upon receipt of the notice of violation.

4. Each day of violation constitutes a separate violation.

5. The process for appeal from any Board decision imposing fines pursuant to this Section shall be as set forth in Section 2-2-112 of this Ordinance.

3-1-114. Appointment of Water Commissioners. Pursuant to Article IV.I.5.d of the Compact, the Board may appoint one or more Water Commissioners to provide day-to-day administration of water on the Reservation. The appointment shall specify the geographic area for which the commissioner shall have responsibility.

3-1-115. Powers and Duties of Water Commissioners. Subject to the jurisdictional limitation set forth in Article IV.I.5.d.ii of the Compact and Section 3-1-101(1) of this Ordinance, any Water Commissioner appointed

pursuant to Section 3-1-114 of this Ordinance:

1. Shall, consistent with the terms and conditions of the Compact, the federal legislation ratifying the Compact, this Ordinance, and the terms of all applicable Appropriation Rights and Existing Uses, distribute water in the proper priority;

2. Shall, as near as may be practicable, divide, regulate and control the use of the water of all streams, springs, lakes or other sources of water within that Water Commissioner's district to prevent the Waste of water or its use in excess of the volume to which any Appropriator is lawfully entitled, including through the opening and closing of headgates. Whenever a Water Commissioner regulates a headgate to a ditch or the controlling Works of reservoirs, it shall be that Water Commissioner's duty to attach to such headgate or controlling Works a written notice, properly dated and signed, setting forth the fact that such headgate or controlling Works has been properly regulated and is wholly under the Water Commissioner's control and such notice shall be a legal notice to all parties interested in the division and distribution of the water of such ditch or reservoir;

3. Shall notify the Engineer in writing of the non-compliance of any water user with a prior order of the Engineer or the Board or any prior written directive of that Water Commissioner issued pursuant to subsection (4) of this Section;

4. May issue written directives to any Appropriator, or any Illegal user of water, concerning day-to-day actions that must be taken to facilitate the execution of the duties of that Water Commissioner as set forth in subsections (1) and (2) of this Section; and

5. May recommend to the Engineer, in writing, conditions to be placed on the exercise of any Appropriation Right or Existing Use on the Reservation, including the requirement of measuring devices and the necessity of structural changes to diversion or other structures. The Water Commissioner shall serve copies of any such written recommendation on the Appropriator(s) whose Appropriation Right(s) or Existing Use(s) are referenced in the recommendation.

3-1-116. Recourse from Water Commissioner Decisions. Any Person who may be injured by the action or inaction of a Water Commissioner has the right to petition the Engineer pursuant to the provisions of Section 3-1-105 of this Ordinance.

3-1-117. Removal of Water Commissioners. Water Commissioners shall serve at the pleasure of the Board and may be removed by unanimous vote of the Board at any time.

**Section 3.** Section 3-7-211, MCA, is amended to read:

**"3-7-211. Appointment of water commissioners.** ~~The~~ Except as provided in [section 2], the district court having jurisdiction over the hydrologically interrelated portion of a water division, as described in 85-2-231(3), in which the controversy arises may appoint and supervise a water commissioner as provided for in Title 85, chapter 5."

**Section 4.** Section 85-2-111, MCA, is amended to read:

**"85-2-111. Department powers.** (1) The department may:

~~(1)~~(a) enter into agreements with federal, state, or local agencies necessary to carry out this chapter;

~~(2)~~(b) apply for, accept, administer, and expend funds, grants, gifts, and loans from the federal government or any other public or private source for the purposes of this chapter.

(2) The department shall, pursuant to [sections 1 and 2], recognize the jurisdiction of the Flathead reservation water management board over water rights, including permitting of new uses, changes of existing uses, enforcement of water right calls, and all aspects of enforcement within the exterior boundaries of the Flathead Indian reservation."

**Section 5.** Section 85-2-114, MCA, is amended to read:

**"85-2-114. Judicial enforcement.** (1) If the department ascertains, by a means reasonably considered sufficient by it, that a person is wasting water, using water unlawfully, preventing water from moving to another person having a prior right to use the water, or violating a provision of this chapter, it may petition the district court supervising the distribution of water among appropriators from the source to:

(a) regulate the controlling works of an appropriation as may be necessary to prevent the wasting or unlawful use of water or to secure water to a person having a prior right to its use;

(b) order the person wasting, unlawfully using, or interfering with another's rightful use of the water to cease and desist from doing so and to take steps that may be necessary to remedy the waste, unlawful use, or interference; or

(c) issue a temporary, preliminary, or permanent injunction to prevent a violation of this chapter. Notwithstanding the provisions of Title 27, chapter 19, part 3, a temporary restraining order must be granted if it clearly appears from the specific facts shown by affidavit or by the verified complaint that a provision of this chapter is being violated.

(2) Upon the issuance of an order or injunction, the department may attach to the controlling works a

written notice, properly dated and signed, setting forth the fact that the controlling works have been properly regulated by it. The notice constitutes legal notice to all persons interested in the appropriation or distribution of the water.

(3) The department may also direct its own attorney or request the attorney general or county attorney to bring suit to enjoin the waste, unlawful use, interference, or violation.

(4) The county attorney or the attorney general may bring suit to enjoin the waste, unlawful use, interference, or violation or bring an action under 85-2-122(1) without being requested to do so by the department.

(5) A county attorney who takes action pursuant to subsection (3) or (4) may request assistance from the attorney general.

(6) When enforcing the provisions of this section, the department, the county attorney, and the attorney general shall give priority to protecting the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation.

(7) After considering the provisions of subsection (6), the department may attempt to obtain voluntary compliance through warning, conference, or any other appropriate means before petitioning the district court under subsection (1). An attempt to obtain voluntary compliance under this subsection must extend over a period of at least 7 days and may not exceed 30 working days.

(8) Pursuant to [section 2], the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation."

**Section 6.** Section 85-2-301, MCA, is amended to read:

**"85-2-301. Right to appropriate -- recognition and confirmation of permits issued after July 1, 1973.** (1) After July 1, 1973, a person may not appropriate water except as provided in this chapter. A person may appropriate water only for a beneficial use.

(2) (a) Only the department may appropriate water by permit for transport outside the following river basins:

(i) the Clark Fork River and its tributaries to its confluence with Lake Pend Oreille in Idaho;

(ii) the Kootenai River and its tributaries to its confluence with Kootenay Lake in British Columbia;

(iii) the St. Mary River and its tributaries to its confluence with the Oldman River in Alberta;

(iv) the Little Missouri River and its tributaries to its confluence with Lake Sakakawea in North Dakota;

(v) the Missouri River and its tributaries to its confluence with the Yellowstone River in North Dakota; and

(vi) the Yellowstone River and its tributaries to its confluence with the Missouri River in North Dakota.

(b) The department may lease water subject to this subsection (2) under the provisions of 85-2-141.

(3) A right to appropriate water may not be acquired by any other method, including by adverse use, adverse possession, prescription, or estoppel. The method prescribed by this chapter is exclusive.

(4) All permit actions of the department after July 1, 1973, are recognized and confirmed subject to this part and any terms, conditions, and limitations placed on a permit by the department.

(5) Pursuant to [section 2], the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation."

**Section 7.** Section 85-2-302, MCA, is amended to read:

**"85-2-302. Application for permit or change in appropriation right.** (1) Except as provided in 85-2-306 and 85-2-369, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or related distribution works unless the person applies for and receives a permit or an authorization for a change in appropriation right from the department.

(2) The department shall adopt rules that are necessary to determine whether or not an application is correct and complete, based on the provisions applicable to issuance of a permit under this part or a change in appropriation right pursuant to Title 85, chapter 2, part 4. The rules must be adopted in compliance with Title 2, chapter 4.

(3) The application must be made on a form prescribed by the department. The department shall make the forms available through its offices.

(4) (a) Subject to subsection (4)(b), the applicant shall submit a correct and complete application. The determination of whether an application is correct and complete must be based on rules adopted under subsection (2) that are in effect at the time the application is submitted.

(b) If an application is for a permit to appropriate water with a point of diversion, conveyance, or place of use on national forest system lands, the application is not correct and complete under this section until the applicant has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.

(5) The department shall notify the applicant of any defects in an application within 180 days. The defects must be identified by reference to the rules adopted under subsection (2). If the department does not notify the

applicant of any defects within 180 days, the application must be treated as a correct and complete application.

(6) An application does not lose priority of filing because of defects if the application is corrected or completed within 30 days of the date of notification of the defects or within a further time as the department may allow, but not to exceed 90 days from the date of notification. If an application is made correct and complete after the mandated time period, but within 90 days of the date of notification of the defects, the priority date of the application is the date the application is made correct and complete.

(7) An application not corrected or completed within 90 days from the date of notification of the defects is terminated.

(8) Pursuant to [section 2], the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation."

**Section 8.** Section 85-2-306, MCA, is amended to read:

**"85-2-306. Exceptions to permit requirements.** (1) (a) Except as provided in subsection (1)(b), ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works.

(b) If another person has rights in the ground water development works, water may be appropriated with the written consent of the person with those property rights or, if the ground water development works are on national forest system lands, with any prior written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the certificate.

(c) If the person does not have a possessory interest in the real property from which the ground water may be appropriated, the person shall provide to the owner of the real property written notification of the works and the person's intent to appropriate ground water from the works. The written notification must be provided to the landowner at least 30 days prior to constructing any associated works or, if no new or expanded works are proposed, 30 days prior to appropriating the water. The written notification under this subsection is a notice requirement only and does not create an easement in or over the real property where the ground water development works are located.

(2) Inside the boundaries of a controlled ground water area, ground water may be appropriated only:

(a) according to a permit received pursuant to 85-2-508; or

(b) according to the requirements of a rule promulgated pursuant to 85-2-506.

(3) (a) Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring:

(i) when the appropriation is made by a local governmental fire agency organized under Title 7, chapter 33, and the appropriation is used only for emergency fire protection, which may include enclosed storage;

(ii) when a maximum appropriation of 350 gallons a minute or less is used in nonconsumptive geothermal heating or cooling exchange applications, all of the water extracted is returned without delay to the same source aquifer, and the distance between the extraction well and both the nearest existing well and the hydraulically connected surface waters is more than twice the distance between the extraction well and the injection well;

(iii) when the appropriation is outside a stream depletion zone, is 35 gallons a minute or less, and does not exceed 10 acre-feet a year, except that a combined appropriation from the same source by two or more wells or developed springs exceeding 10 acre-feet, regardless of the flow rate, requires a permit; or

(iv) when the appropriation is within a stream depletion zone, is 20 gallons a minute or less, and does not exceed 2 acre-feet a year, except that a combined appropriation from the same source by two or more wells or developed springs exceeding this limitation requires a permit.

(b) (i) Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department through its offices.

(ii) Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iii) If a notice is not corrected and completed within the time allowed, the priority date of appropriation is the date of refiling a correct and complete notice with the department.

(c) A certificate of water right may not be issued until a correct and complete notice has been filed with the department, including proof of landowner notification or a written federal special use authorization as necessary under subsection (1). The original of the certificate must be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(4) An appropriator of ground water by means of a well or developed spring first put to beneficial use

between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (3), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing of a notice, as provided in subsection (3), or the date of the filing of the claim of existing water right.

(5) An appropriation under subsection (4) is an existing right, and a permit is not required. However, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(6) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if:

(a) the maximum capacity of the impoundment or pit is less than 15 acre-feet;

(b) the appropriation is less than 30 acre-feet a year;

(c) the appropriation is from a source other than a perennial flowing stream; and

(d) the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger.

(7) (a) Within 60 days after constructing an impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Subject to subsection (7)(b), upon receipt of a correct and complete application for a stock water provisional permit, the department shall automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights of other appropriators.

(b) If the impoundment or pit is on national forest system lands, an application is not correct and complete under this section until the applicant has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.

(8) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the department under 85-2-113.

(9) Pursuant to [section 2], the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation."

**Section 9.** Section 85-2-427, MCA, is amended to read:

**"85-2-427. (Temporary) Temporary lease of appropriation right -- requirements -- rulemaking.** (1) Applications to temporarily lease an appropriation right that comply with the requirements of this section are not subject to the provisions of 85-2-402, 85-2-407, 85-2-408, or 85-2-436. After obtaining department approval pursuant to this section, an appropriator may temporarily lease an appropriation right.

(2) The amount of water leased may not exceed the total consumptive use of the appropriation right. For an irrigation right, the consumptive volume may not exceed 1 acre-foot per acre irrigated. The department shall determine the consumptive volume limits for other uses by rule.

(3) (a) Each appropriation right leased pursuant to this section:

(i) must have been used within 5 years prior to the application date;

(ii) may be leased only during the period of diversion for the appropriation right; and

(iii) may not be leased for more than 2 years one time during any consecutive 10-year period.

(b) The volume of water leased may not exceed 180 acre-feet per year.

(c) The point of diversion for the appropriation right may not be changed.

(4) The use of any appropriation rights on the place of use associated with a leased appropriation right is forbidden during the term of the lease.

(5) Storage may not be added to the leased appropriation right at the point of diversion or the original place of use.

(6) This section does not apply to changes in an appropriation right that would result in leased water being transported outside Montana. Proposed out-of-state uses are subject to the provisions of 85-2-402.

(7) Water leased pursuant to this section must be measured at the point of diversion by a meter approved by the department. The appropriator shall report the amount of water measured at the end of the year in which the lease occurred or upon request of the department.

(8) An applicant proposing to lease an appropriation right pursuant to this section shall submit a correct and complete application on a form provided by the department and a fee as established by rule. The application must include:

(a) the name and address of each lessee;

(b) the name of all owners of each appropriation right;

(c) the number of each appropriation right;

(d) the proposed use and the place of use for the leased water;

(e) the source of water to be appropriated;

(f) the start and end dates of the proposed lease;

(g) the proposed diversion flow rate and volume of water to be used during the lease;

(h) evidence that the appropriation right has been used within the last 5 years;

(i) a description of how the existing use of the appropriation rights would cease at the place of use during the lease period, including the number and location of acres to be removed from irrigation, if applicable; and

(j) an analysis of potential adverse effects and a description of planned actions to mitigate potential adverse effects.

(9) Within 30 days of receiving the application, the department shall approve or deny the application. An approved application must be correct and complete and meet the requirements of this section. The department may approve an application with conditions.

(10) After approval, the department shall provide notice of the proposed lease that includes the information in subsections (8)(a) through (8)(g). The department shall:

(a) mail individual notice to potentially affected appropriators identified by the department in the area of the point of diversion; and

(b) post the notice on the department's website.

(11) (a) For 60 days from the date that notice is mailed pursuant to subsection (10), the department shall accept correct and complete objections to the proposed lease from any person whose property, water rights, or interests would be adversely affected by the proposed appropriation. The objection must be made on a form provided by the department.

(b) The department shall determine if an objection is valid. A valid objection contains facts indicating that the rights of other appropriators would be adversely affected by the lease of the appropriation right. If the department determines that an objection is valid, the approval for the use of the appropriation right under the lease is canceled and no water may be used pursuant to the lease.

(c) The owner of an appropriation right whose approval is canceled under subsection (11)(b) may request a hearing on the objection pursuant to 2-4-604 within 15 days of notice of the cancellation. The department shall issue an order reinstating approval for the use of the appropriation right under the lease if the

applicant proves by a preponderance of the evidence that the water rights of other appropriators will not be adversely affected by the lease.

(12) Leased water may not be put to use until a final determination is made pursuant to subsection (11). The lessee shall provide the department with a copy of the executed lease agreement before the leased water is put to use.

(13) Violations of this section are subject to the provisions of 85-2-114 and 85-2-122. This subsection does not limit the remedies available to an appropriator to enjoin or seek damages from the owner of an appropriation right who leased the water or from a lessee.

(14) The department shall adopt rules to implement this section. The rules must include definitions of consumptive uses and criteria for determining if an appropriation right has been used in the 5 years prior to the temporary lease application.

(15) The department shall report annually to the water policy interim committee provided for in 5-5-231. The report must include the number of leases, the amount of water leased, and the number of irrigated acres taken out of production.

(16) Pursuant to [section 2], the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation. (Terminates July 1, 2019--sec. 4, Ch. 236, L. 2013.)"

**Section 10.** Section 85-2-506, MCA, is amended to read:

**"85-2-506. Controlled ground water areas -- designation or modification.** (1) The department may by rule designate or modify permanent or temporary controlled ground water areas as provided in this part. The rule for each controlled ground water area must designate the boundaries of the controlled ground water area.

(2) The rulemaking process for designation or modification of a controlled ground water area may be initiated by:

(a) the department;

(b) submission of a correct and complete petition from a state or local public health agency for identified public health risks; or

(c) submission of a correct and complete petition:

(i) by a municipality, county, conservation district, or local water quality district formed under Title 7, chapter 13, part 45; or

(ii) signed by at least one-third of the water right holders in a proposed controlled ground water area.

(3) (a) A correct and complete petition must:

(i) be in a form prescribed by the department and must contain analysis prepared by a hydrogeologist, a qualified scientist, or a qualified licensed professional engineer concluding that one or more of the criteria provided in subsection (5) are met; and

(ii) describe proposed measures, if any, to mitigate effects of the criteria identified in subsection (5) that are alleged in the petition.

(b) When the department proposes a rule pursuant to this section, the place for the hearing must be within or as close as practical to the proposed or existing controlled ground water area.

(c) (i) The department shall notify the petitioner of any defects in a petition within 180 days. If the department does not notify the petitioner of any defects within 180 days, the petition must be treated as correct and complete.

(ii) A petition that is not made correct and complete within 90 days from the date of notification by the department of any defect is terminated.

(4) (a) Within 60 days after a petition is determined to be correct and complete, the department shall:

(i) deny in writing the petition in whole or in part, stating the reasons for denial;

(ii) inform the petitioner that the department will study the information presented in the petition for a period not to exceed 90 days before denying or proceeding with the petition; or

(iii) initiate rulemaking proceedings in accordance with Title 2, chapter 4, part 3.

(b) Failure of the department to act under subsection (4)(a) does not mandate that the department grant the petition for rulemaking.

(c) In addition to the notice requirements of Title 2, chapter 4, parts 1 through 4, the department shall provide public notice of the rulemaking hearing by:

(i) publishing a notice at least once each week for 3 successive weeks, with the first notice not less than 30 days before the date of the hearing in a newspaper of general circulation in the county or counties in which the proposed controlled ground water area is located;

(ii) serving by mail a copy of the notice, not less than 30 days before the hearing, upon each person or public agency known from an examination of the records of the department to be a water right holder with a diversion within the proposed controlled ground water area, all landowners of record within the proposed controlled ground water area, and each well driller licensed in Montana whose address is within any county in which any part of the proposed controlled ground water area is located; and

(iii) serving by mail a copy of the notice upon any other person or state or federal agency that the department feels may be interested in or affected by the proposed designation or modification of a controlled ground water area.

(d) The notice under subsection (4)(c) must include a summary of the basis for the proposed rule. Publication and mailing of the notice as prescribed in this section, when completed, is considered to be sufficient notice of the hearing to all interested persons.

(5) The department may designate a permanent controlled ground water area by rule if it finds by a preponderance of the evidence that any of the following criteria have been met and cannot be appropriately mitigated:

(a) current or projected reductions of recharge to the aquifer or aquifers in the proposed controlled ground water area will cause ground water levels to decline to the extent that water right holders cannot reasonably exercise their water rights;

(b) current or projected ground water withdrawals from the aquifer or aquifers in the proposed controlled ground water area have reduced or will reduce ground water levels or surface water availability necessary for water right holders to reasonably exercise their water rights;

(c) current or projected ground water withdrawals from the aquifer or aquifers in the proposed controlled ground water area have induced or altered or will induce or alter contaminant migration exceeding relevant water quality standards;

(d) current or projected ground water withdrawals from the aquifer or aquifers in the proposed controlled ground water area have impaired or will impair ground water quality necessary for water right holders to reasonably exercise their water rights based on relevant water quality standards;

(e) ground water within the proposed controlled ground water area is not suited for beneficial use; or

(f) public health, safety, or welfare is or will become at risk.

(6) (a) If the department finds that sufficient facts are not available to designate a permanent controlled ground water area, it may designate by rule a temporary controlled ground water area to allow studies to obtain the facts needed to determine whether or not it is appropriate to designate a permanent controlled ground water area. The department shall set the length of time that the temporary controlled ground water area will be in effect. Subject to subsection (6)(c), the term of a temporary controlled ground water area may be extended by rule.

(b) A temporary controlled ground water area designation is for the purpose of study and cannot include the control provisions provided in subsection (7), other than measurement, water quality testing, and reporting

requirements.

(c) A temporary controlled ground water area designation may not exceed a total of 6 years, including any extensions.

(d) Prior to expiration of a temporary controlled ground water area, the department may amend or repeal the rule establishing the temporary controlled ground water area or may designate a permanent controlled ground water area through the rulemaking process under this section.

(e) Studies for temporary controlled ground water areas may be considered for funding under the renewable resource grant and loan program in Title 85, chapter 1, part 6.

(f) If there is a ground water investigation program within the bureau, the ground water assessment steering committee established by 2-15-1523 shall consider temporary controlled ground water areas for study.

(7) A controlled ground water area may include but is not limited to the following control provisions:

(a) a provision closing the controlled ground water area to further appropriation of ground water;

(b) a provision restricting the development of future ground water appropriations in the controlled ground water area by flow, volume, purpose, aquifer, depth, water temperature, water quality, density, or other criteria that the department determines necessary;

(c) a provision requiring measurement of future ground water or surface water appropriations;

(d) a provision requiring the filing of notice on land records within the boundary of a permanent controlled ground water area to inform prospective holders of an interest in the property of the existence of a permanent controlled ground water area. Notice of the designation must be removed or modified as necessary to accurately reflect modification or repeal of a permanent designation within 60 days.

(e) a provision for well spacing requirements, well construction constraints, and prior department approval before well drilling, unless the well is regulated pursuant to Title 82, chapter 11;

(f) a provision for mitigation of ground water withdrawals;

(g) a provision for water quality testing;

(h) a provision for data reporting to the department; and

(i) other control provisions that the department determines are appropriate and adopts through rulemaking.

(8) Pursuant to [section 2], the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation."

**Section 11.** Section 85-5-110, MCA, is amended to read:

**"85-5-110. Appointment of water mediators -- duties.** (1) ~~The~~ Except as provided in [section 2], the judge of the district court may appoint a water mediator to mediate a water controversy in a decreed or nondecreed basin under the following circumstances:

(a) upon request of the governor;

(b) upon petition by at least 15% of the owners of water rights in a decreed or nondecreed basin; or

(c) in the discretion of the district court having jurisdiction.

(2) A water mediator appointed under this section may:

(a) discuss proposed solutions to a water controversy with affected water right holders;

(b) review options related to scheduling and coordinating water use with affected water right holders;

(c) discuss water use and water needs with persons and entities affected by the existing water use;

(d) meet with principal parties to mediate differences over the use of water; and

(e) hold public meetings and conferences to discuss and negotiate potential solutions to controversies over use of water.

(3) If the governor requests or a state agency petitions for a water mediator, the governor or agency shall pay all or a majority of the costs of the water mediator as determined equitable by the district court having jurisdiction.

(4) The governor may use funds appropriated under 75-1-1101 to pay the costs of a water mediator.

(5) This section does not allow a water mediator to require any valid water right holder to compromise or reduce any of the holder's existing water rights.

(6) If an appropriator voluntarily ceases to use all or part of an appropriation right or voluntarily ceases to use an appropriation right according to its terms and conditions as a result of the efforts of a mediator appointed under this section, the appropriator may not be considered to have abandoned all or any portion of the appropriation right."

NEW SECTION. **Section 12. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

NEW SECTION. **Section 13. Codification instruction.** [Sections 1 and 2] are intended to be codified

as an integral part of Title 85, chapter 20, and the provisions of Title 85, chapter 20, apply to [sections 1 and 2].

NEW SECTION. **Section 14. Effective date.** [This act] is effective on passage and approval.

- END -

# MINUTES

## MONTANA SENATE
## 64th LEGISLATURE - REGULAR SESSION

## COMMITTEE ON JUDICIARY

**Call to Order:** Chair Scott Sales, on February 16, 2015 at 8:00 A.M., in Room 303 Capitol

## ROLL CALL

**Members Present:**

Sen. Scott Sales, Chair (R)
Sen. Jennifer Fielder, Vice Chair (R)
Sen. Robyn Driscoll (D)
Sen. Jedediah Hinkle (R)
Sen. Douglas (Doug) Kary (R)
Sen. Cliff Larsen (D)
Sen. Mary McNally (D)
Sen. Mary Sheehy Moe (D)
Sen. Diane Sands (D)
Sen. Nels Swandal (R)
Sen. Chas Vincent (R)

**Members Excused:** Sen. Kris Hansen (R)

**Members Absent:** None

**Staff Present:** Julianne Burkhardt, Legislative Branch
Pam Schindler, Committee Secretary

**Audio Committees:** These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

**Committee Business Summary:**

Hearing & Date Posted: SB 262, 2/6/2015

## HEARING ON SB 262

**Opening Statement by Sponsor**:

00:02:01 Sen. Chas Vincent (R), SD 1, opened the hearing on SB 262, Implement CSKT water rights settlement.

**Proponents' Testimony**:

00:24:12 Vernon Finley, chairman, Tribal Council, Confederated Salish and Kootenai Tribe (CSKT)
00:29:31 Andrew Huff, chief legal council, Governor's Office, State of Montana
00:31:57 Melissa Hornbein, staff attorney, Reserved Water Rights Compact Commission (RWRCC)
**EXHIBIT(jus35a01)**
**EXHIBIT(jus35a02)**
**EXHIBIT(jus35a03)**

00:47:28 Corey Swanson, county attorney, Broadwater County, special assistant attorney general to work on the compact, Department of Justice (DOJ)
00:57:49 Colleen Coyle, water rights attorney, Bozeman, Ponderosa Advisor, previous senior water master, Montana Water Court
01:02:57 John Youngberg, executive vice president, Montana Farm Bureau Federation (MFBF)
01:06:49 Gene Curry, president, Montana Stockgrowers Association (MSGA)
**EXHIBIT(jus35a04)**

01:10:22 Steve Hughes, Montana Water Resources Association (MWRA)
01:12:38 Jack Horner, rancher/farmer
01:14:49 Ric Smith, owner/broker, Century 21, Big Sky
01:18:35 David Mannix, self
01:20:25 Krista Lee Evans, Senior Water Rights Coalition (SRWRC)
**EXHIBIT(jus35a05)**

01:23:00 Walter Sales, Association of Gallatin Water Irrigators, Bozeman
01:24:08 Craig Woolard, public works director, City of Bozeman
01:25:44 Lorents Grosfield, rancher, Big Timber; co-chair, Farmers and Ranchers from Montana (FARM)
01:29:30 Rep. Susan Webber, HD 16, Browning
01:29:53 Wayne Scammon, St. Ignatius
01:31:27 Chris Hager, self, Flathead Lake United Methodist Camp
01:34:07 Sam Sill, Missoula Area Chamber of Commerce
01:35:12 Rick Cline, rancher/farmer; president, Westside Ditch Company
01:36:17 Karen Fagg, self, Yellowstone County; former director, Department of Natural Resources and Conservation (DNRC)
01:37:55 Roger Raynal, Tucker Crossing Ranch
**EXHIBIT(jus35a06)**

01:39:33 Jim Hagenbarth, self
01:43:11 Hans McPherson, self; vice president, Montana Farm Bureau Federation; Farm Ditch Irrigators, Bitterroot Valley
**EXHIBIT(jus35a07)**

01:44:01 Holly Franz, Billings Chamber of Commerce; Mountain Water Company
**EXHIBIT(jus35a08)**

01:45:12 Jim Berg, farmer/rancher
01:45:56 John Crowley, manager, Bitterroot Irrigation District
01:46:56 JR Iman, Painted Rocks Water Users
**EXHIBIT(jus35a09)**

01:48:28 Hertha Lund, attorney, Common Sense Citizens for the CSKT Compact
**EXHIBIT(jus35a10)**

01:51:13 Dick Erb, farmer/rancher
01:52:36 Mark Aagenes, Montana Trout Unlimited
01:53:10 Dorothy Bradley, Clyde Park, member RWRCC
01:56:33 Mike Murphy, Montana Water Resource Association
01:56:53 Candace West, self; retired attorney, Montana Water Court
01:57:29 John Harrison, attorney, Confederated Salish and Kootenai Tribe (CSKT)
01:57:44 Dennis Duty, self
01:58:00 Brian Upton, attorney, CSKT
01:58:13 George Alberda, chief water commissioner, Gallatin Valley
01:58:30 Sherwin Leep, Gallatin Conservation District
01:58:57 John Alberda, farmer/rancher
01:59:11 Joel Clairmont, CSKT
01:59:28 Joe McDonald, rancher/farmer
01:59:46 Mike Gaffke, self
01:59:59 Ken McAlpin, self
02:00:21 Steve Arca, CSKT
02:00:38 Arnell Phillips, CSKT
02:00:50 Paula Webster, CSKT
02:01:00 Jennifer Finley, CSKT
02:01:10 Joey Jayne, self
02:01:20 Richard Janssen, department head, CSKT
02:01:32 Carolee Wenderoth, Polson
02:01:44 Roger Starkels, self
02:01:59 David Pruitt, self
02:02:25 Ken Cornelius, Ronan
02:02:36 Bernie Atwin, Ronan, CSKT
02:02:49 Maggie Goode, self
02:03:04 Edward McClure, Polson
02:03:20 Janna Clairmont, self
02:03:31 Patrick Lake, self
**EXHIBIT(jus35a11)**

02:03:41 Jacob Cowgill, self, Montana Farmers Union
02:03:52 Jan Tusick, Polson

02:04:06 Doug Alberda, Bozeman
02:04:15 Jerry Johnson, St. Ignatius
02:04:23 Sharon Guenzler, Mission Valley Irrigators
02:04:33 Paul Guenzler, self
02:04:40 Susan Lake, self
02:04:47 Greg Shock, St. Ignatius
02:04:55 Claudia McCready, rancher
02:05:02 Lloyd Irvine, Ronan, CSKT
02:05:13 Megan McNamer, self
02:05:20 Ida Montague, Helena
02:05:31 Vern Clairmont, self
02:05:42 Andrea Olsen, self
02:05:57 Dan Decker, Ronan
02:06:09 Roberta Decker, St. Ignatius
02:06:16 Ken TwoTeeth, CSKT
02:06:26 Robert McDonald, CSKT
02:06:36 Eileen Casey, Gallatin County
02:06:47 Sjaan Vincent, Charlo
02:07:01 Rep. Daniel Salomon, HD 93, Ronan, member RWRCC
02:07:20 Naomi Robinson, self
02:07:29 Susette Billedeaux, Ronan, CSKT
02:07:35 Patty Stevens, CSKT Tribal Council
02:07:49 Shelby DeMars, Dillon
02:07:58 Maccine Scammon, St. Ignatius
02:08:06 Jay Bodner, Montana Cattle Women, also for Montana Association of State Grazing Districts
02:08:19 Roy Lake, Ronan
02:08:31 Evelyn Lake, Ronan
02:08:48 Larry VanDyke, self
02:09:02 Carolyn Beecher, Ronan
02:09:13 Craig McClure, Polson
02:09:22 Jack Lake, Ronan
02:09:28 Shane Morigeau, CSKT
02:09:39 Frank Matt, self
02:09:47 Mary Stranahan, Arlee
02:09:56 Jason Adams, CSKT
02:10:04 Willy Stevens, self
02:10:12 Victoria Burkhardt, self
02:10:27 Doreen Vallee, CSKT
02:10:41 Ron Drahan, CSKT
02:10:51 Terry Pitts, CSKT Tribal Council
02:11:02 Carole Lankford, vice chair, CSKT Tribal Council
02:11:12 Shelly Fyant, CSKT Tribal Council
02:11:26 James Bett, CSKT, Jocko Valley

**Opponents' Testimony**:

02:12:29 Rep. Nancy Ballance, HD 87, Hamilton

02:17:36 Catherine Vandemoer, Montana Land and Water Alliance
**EXHIBIT(jus35a12)**

02:32:42 Rick Jore, Ronan
**EXHIBIT(jus35a13)**

02:41:07 Aubyn Curtis, former legislator, SD 1, Lincoln County
**EXHIBIT(jus35a14)**

02:46:46 Abigail St. Lawrence, Flathead Joint Board of Control (FJBC)
02:48:56 Jon Metropoulos, Rocky Mountain Stockgrowers Association (RMSA), also for Harley Hettick, Dixon Melon Company
02:54:48 Boone Cole, co-chairman, FJBC
02:58:59 Tim Orr, St. Ignatius, FJBC
**EXHIBIT(jus35a15)**

03:05:49 Ross Middlemist, rancher, Dixon
**EXHIBIT(jus35a16)**

03:07:29 Jerry Laskody, Mission Irrigation District, FJBC
03:11:34 Harley Hettick, Dixon Melon Company
03:11:58 Kim Baker, Baker Land and Cattle Company, Hot Springs
**EXHIBIT(jus35a17)**

03:14:28 Greg Hinkle, self, former legislator, Thompson Falls
03:16:12 William Myers, Big Fork
**EXHIBIT(jus35a18)**

03:22:32 Verdell Jackson, self, former legislator, Kalispell
**EXHIBIT(jus35a19)**

03:28:25 Robert Pierson, self, Trout Creek
**EXHIBIT(jus35a20)**

03:30:08 Jim Paugh, self, Coffee Creek
**EXHIBIT(jus35a21)**

03:33:12 Jeanette Zentgraf, self, Lolo
**EXHIBIT(jus35a22)**

03:37:13 Thomas Lozeau, CSKT
**EXHIBIT(jus35a23)**

03:47:42 John Trochmann, self
03:48:10 Joan Carroll, St. Regis
03:48:24 Jock O'Shane Hendrickson, CSKT
**EXHIBIT(jus35a24)**

03:48:56 Derek Skees, self
**EXHIBIT(jus35a25)**

03:49:06 Ron Hepp, self
03:49:22 Steve Tobol, Ronan
03:49:35 Leslie Buck, CSKT
03:49:52 Shelley Hendrickson, self
**EXHIBIT(jus35a26)**

03:50:17 Clarice Ryan, Big Fork
03:50:45 Brian Quigley, self
03:50:58 Kim Skinner, self
03:51:05 Michael Hebert, self
**EXHIBIT(jus35a27)**

03:51:23 Joy Claar, self
03:51:34 Chris Sullivan, self
03:51:47 Mark Haag, Columbia Falls
03:52:53 Jerry Gentry, self
03:53:03 Rex Radtke, Hall
03:53:13 Tom Rue, Hall
03:53:23 Carrie Paulsen, Whitefish
03:53:30 Jennifer Nicholson, self
03:53:36 Rachel Nicholson, self
03:53:42 Phil Mitchell, commissioner, Flathead County
**EXHIBIT(jus35a28)**

03:53:54 Randy Doty, Charlo
**EXHIBIT(jus35a29)**

03:54:05 David Passieri, St. Ignatius
03:54:16 Bob Gilbert, Citizens for Balanced Use
03:54:34 Jerry O'Neil, self, Columbia Falls
**EXHIBIT(jus35a30)**

03:54:44 Matt Graveley, Avon, Rocky Mountain Stockgrowers
**EXHIBIT(jus35a31)**

03:54:58 Gerald Cuvilliar, self
**EXHIBIT(jus35a32)**

03:55:13 Clarence Taber, Columbia Falls
03:55:21 Fred Hammel, self
03:55:29 Patrick Lamick, self
03:55:37 Bill Slaughter, commissioner, Granite County
03:55:54 Debbie Biolo, self, Whitefish
**EXHIBIT(jus35a33)**

03:56:08 Margaret Mullaly, Hamilton
03:56:20 Brian Bone, self
03:56:25 Johanna Clark, St. Ignatius
03:56:44 Shane Orian, self
03:57:03 Ruth Costea, self

03:57:12 Debbie Wilson, Kila
**EXHIBIT(jus35a34)**

03:57:25 Alan Wilson, Kila
**EXHIBIT(jus35a35)**

03:57:36 Gary Baertsch, self
03:57:45 Gene Erb, self
03:58:02 Roberta Stoken, self
03:58:10 Harlen Gerdes, Ronan
03:58:23 Wade Shepard, self
03:58:38 Patrick LaGuard, Plains
03:59:02 Wayne Blevins, Flathead Irrigation District
**EXHIBIT(jus35a36)**

03:59:19 Len Shumski, self
03:59:27 Teri Swenson, Ronan
03:59:39 John Swenson, Ronan
03:59:52 Mark French, Paradise
04:00:12 Laura O'Neil, Concerned Citizens of the Flathead
04:00:31 John O'Neil, self
04:00:38 Dan Happel, self
04:00:55 Larry Dolezal, self
04:01:14 James Gould, self
04:01:29 Shirley McHenry, self
04:01:39 Sally Edwards, Lakeside
04:01:48 Gary McHenry, self
04:01:59 Ben Herwitz, White Sulphur Springs
04:02:12 George Hudson, Kalispell

**Informational Testimony**:

04:03:27 John Metesh, Montana Bureau of Mines and Geology
04:03:50 Sen. Bradley Hamlett, SD 15, Cascade

**Questions from Committee Members and Responses**:

04:04:07 Sen. Larsen
04:04:50 Ms. Hornbein, RWRCC
04:06:19 Sen. Swandal
04:07:11 Ms. Horbein
04:10:07 Sen. Fielder
04:10:31 Ms. Hornbein
04:14:26 Sen. Fielder
04:14:51 Ms. Stevens, CSKT
04:15:46 Rhonda Swaney, legal council, CSKT
04:16:29 Sen. Fielder
04:17:36 Mr. Metesh, MBMG
04:19:04 Sen. Fielder
04:19:07 Seth Makepeace, hydrologist, CSKT

04:20:38 Sen. Sands
04:20:52 Mr. Swanson, DOJ
04:22:39 Sen. Fielder
04:23:12 Mr. Orr, FJBC
04:25:22 Sen. Hinkle
04:25:44 Mr. Metropoulos, RMSG
04:26:52 Sen. Hinkle
04:27:11 Ms. Hornbein
04:27:56 Mr. Metropoulos
04:28:58 Sen. Hinkle
04:29:02 Mr. Metrpoulos
04:29:26 Sen. Hinkle
04:29:56 Ms. Hornbein
04:33:08 Sen. McNally
04:33:33 Ms. Hornbein
04:35:51 Sen. McNally
04:36:18 Sen. Vincent
04:38:00 Sen. McNally
04:38:13 John Carter, legal council, CSKT
04:38:53 Sen. Moe
04:39:30 Sen. Vincent
04:41:54 Sen. Kary
04:42:21 Mr. Metropoulos
04:44:53 Sen. Hinkle
04:45:33 Sen. Vincent
04:47:56 Sen. Hinkle
04:48:48 Mr. Finley, CSKT
04:50:33 Ms. Swaney, CSKT
04:51:33 Sen. Hinkle
04:52:05 Sen. Larsen
04:52:38 Ms. Hornbein
04:55:20 Chairman Sales
04:56:19 Mr. Finley
05:00:15 Mr. Carter, CSKT

**Closing by Sponsor**:

05:03:26 Sen. Vincent

## ADJOURNMENT

Adjournment: 1:17 A.M.

_____
Pam Schindler, Secretary

ps

Additional Documents:

**EXHIBIT(jus35aad.pdf)**

# Summary of Water Rights Quantified by CSKT-Montana Compact 2015

| Description | Priority Date | Count | Purpose | Appendix | Water Right | Description in Practical Terms | Flow Rate (cfs) | Volume (acre-feet) |
|---|---|---|---|---|---|---|---|---|
| **Off-Reservation Instream Flow Water Rights** | | | | | | | | |
| Kootenai River | Time Immemorial | 1 | Instream Fishery | Appendix 25 | 76D 30063810 | Nonconsumptive instream flow right. Enforceable daily flow schedule based on seasonal water supply under dry year conditions. Not enforceable up tributaries or at all so long as Libby Dam remains in existence, and the Army Corps is in compliance with 2008 Biological Opinion. | Individual Daily Values | N/A |
| Swan River | Time Immemorial | 1 | Instream Fishery | Appendix 26 | 76K 30063809 | Nonconsumptive instream flow right. Enforceable daily flow schedule based on seasonal water supply under dry year conditions. Enforceable only against surface water irrigation and over 100 gallons per minute hydrologically connected groundwater irrigation rights. Water right does not affect legal availability for new permit applicants under current DNRC regs. | Individual Daily Values | N/A |
| Clark Fork River | Time Immemorial | 1 | Instream Fishery | Appendix 27 | 76N 30063808 | Nonconsumptive instream flow right that equals the Cabinet Gorge and Noxon Dam minimum FERC requirement currently established at 5,000 cfs. Should the FERC requirement be lowered, the enforceable flow rate for this water right must be reduced to match. Enforceable only against mainstem (not tributary) surface water irrigation and over 100 gallons per minute hydrologically connected groundwater irrigation rights. Right does not affect legal availability for new permit applicants under current DNRC water right permitting regulations. | 5,000 | N/A |
| North Fork Placid Creek | Time Immemorial | 1 | Instream Fishery | Appendix 35 | 76F 30063811 | Nonconsumptive instream flow right. There is only one (FIIP) diversion upstream of the protected stream reach; historic diversion levels for this right are maintained. | 10 | N/A |
| Kootenai Tributaries: Big, Steep, Sutton, and Boulder Creeks | Time Immemorial | 4 | Instream Fishery | Appendix 36 | 76D 30063807, 76D 30052869, 76D 30063806, & 76D 30052868 | Nonconsumptive instream use; Cannot be changed; Located in headwaters above all existing water uses, therefore no existing uses subject to call. | Individual Daily Values | N/A |
| Former Milltown Dam Water Right | 1904 | 2 | Instream Fishery | Appendix 30 Appendix 31 | 76M 94404 01 & 76M 94404 02 | Former Milltown Dam hydroelectric water right is changed by the Compact into 2 nonconsumptive instream flow rights. Enforceable daily flow schedule based on seasonal water supply under dry year conditions. Enforceable only against junior surface water irrigation and > 100 gallons per minute groundwater irrigation rights after 4 of 5 consecutive days below minimum flow. Requires 10 years stakeholder planning effort. | Individual Daily Values | |
| **Total Water Rights Recognized** | | **222** | | | | | | |

- This summary does not include existing water rights to be co-owned by the Tribes and DFWP enumerated in appendices 22, 24, 28, 30
- For more information email: dnrrwrcc@mt.gov or call 406-444-5700



SENATE JUDICIARY
Exhibit No. 2
Date: 2/16/15
Bill No. SB262

# Summary of Water Rights Quantified by CSKT-Montana Compact 2015

| Description | Priority Date | Count | Purpose | Appendix | Water Right | Description in Practical Terms | Flow Rate (cfs) | Volume (acre-feet) |
|---|---|---|---|---|---|---|---|---|
| **On-Reservation Water Rights** | | | | | | | | |
| Flathead Indian Irrigation Project (FIIP) Water Use Right | 1855 | 3 | Irrigation | Appendix 5 | 76L 30052930 - 76L 30052932 | May serve up to, but not more than 135,000 acres (currently 128,242 acres); Exercise of this right satisfied by meeting the RDA values for each RDA Area described in Appendix 3.2. FIIP Irrigators entitled to delivery of water pursuant to Article IV.D.2. | 220 Individual Points of Diversion | Maximum Diverted: 360,950 |
| Flathead System Compact Water Right | 1855 | 1 | Any | Appendix 9 | 76LJ 30063812 | Direct flow water right from the Flathead River, including Flathead Lake; Up to 90,000 AF per year of storage water from Hungry Horse Reservoir; state has ability to issue leases for 11,000 AF for DCMI mitigation off Reservation; Additional water can be leased from Tribes for any beneficial purpose (on or off Reservation) and is available for FIIP during Shared Shortages. | Details in Abstract | Diverted: 229,383<br>Consumed: 128,158 |
| Instream Flow - Natural Sites | Time Immemorial | 102 | Fish & Wildlife | Appendix 10 | 76LJ 30052674- 76L 30052775 | Nonconsumptive instream use; cannot be changed; located in headwaters above existing uses; no existing uses subject to call. | Individual Monthly Values | N/A |
| Instream Flow - FIIP Sites | Time Immemorial | 33 | Fish & Wildlife | Appendix 11 | 76L 30052776- 76L 30052808 | Nonconsumptive instream use; cannot be changed; administered with regard to FIIP diversions according to Article IV.C-F of Compact; administered with regard to existing non-project irrigation uses according to Article III.G.3 of the Compact. | Individual Monthly Values | N/A |
| Instream Flow - Other Sites | Time Immemorial | 49 | Fish & Wildlife | Appendix 12 | 76LJ 30052818- 76L 30052866 | Nonconsumptive instream use; cannot be changed; enforcement schedules developed per UMO section 2-1-115 must allow for exercise of all valid existing water rights. | Individual Monthly Values | N/A |
| FIIP Reservoir Minimum Pool | 1855 | 2 | Fish & Wildlife | Appendix 15 | 76L 30052927 & 76L 30052929 | Pool minimums designated to protect reservoir biology. | 54 Individual Points of Diversion | Evaporation |
| Wetlands - Protective | Time Immemorial | 12 | Fish & Wildlife | Appendix 16 Appendix 21 Appendix 23 | 76L 30052661-667, 76L 30052922, 76LJ 30052924-926 | Cannot be used to make call on any water right; no artificial means of diversion or control of water that can be used to manipulate or otherwise affect the water supply, these water rights serve to protect existing Wetlands from adverse effects from new permits and changes to existing water rights. | N/A | N/A |
| High Mountain Lakes | Time Immemorial | 6 | Fish & Wildlife | Appendix 17 | 76L 30052668- 76L 30052673 | No artificial means of diversion or control of water; Located in headwaters above all existing water uses, therefore no existing uses will be subject to call. | N/A | N/A |
| Flathead Lake | Time Immemorial | 1 | Fish & Wildlife | Appendix 18 | 76LJ 30052867 | Nonconsumptive minimum lake elevation water right that protects the natural elevation level of Flathead Lake, below elevations maintained by Kerr Dam. No artificial means of diversion or control of water. Enforceable at natural lake level 2883' in elevation; Does not affect any existing water users or allow Tribes to drain the lake to that level. | N/A | N/A |
| Power Generation - Boulder & Hellroaring | 1855 | 3 | Hydropower | Appendix 19 Appendix 20 | 76LJ 30052870- 76LJ 30052872 | Non consumptive hydro power water rights. | 8<br>6 | nonconsumptive |

SENATE JUDICIARY
Exhibit No. 3
Date: 2/16/15
Bill No. SB262

# Summary of the Proposed Compact and Ordinance for the Flathead Reservation Water Rights Settlement

January 8, 2015

## Introduction

The Confederated Salish and Kootenai Tribes (CSKT or Tribes), the State of Montana, and the United States (collectively the Parties) have negotiated a proposed water rights settlement that includes a Compact that will quantify the water rights of the Confederated Salish and Kootenai Tribes on and off the Flathead Indian Reservation (Reservation) and a Unitary Administration and Management Ordinance (also referred to as Law of Administration) that provides for the administration of water rights on the Reservation.

The current agreement contains significant changes from the settlement components presented to the 2013 Montana Legislature. In 2013, the proposed settlement included a Compact negotiated by the Parties and a Flathead Indian Irrigation Project Water Use Agreement, negotiated by the Flathead Joint Board of Control, the Tribes, and the United States, which was appended to the Compact; however, the 2013 Montana Legislature did not ratify the Compact. The dissolution of the FJBC in 2013 meant that the Water Use Agreement was no longer valid. In 2014, the Parties agreed to a limited reopening of negotiations to resolve the issues that were addressed in the Water Use Agreement.

Changes include:

- The Compact sets River Diversion Allowances (RDAs) for the Flathead Indian Irrigation Project (FIIP) and allows for their evaluation and adjustment to meet historic farm deliveries as defined in the Compact.
- The Compact eliminates the concept of a Farm Turnout Allowance, leaving distribution of water within the FIIP to the Project Operator.
- The Compact contains an evaluation process to ensure that modeled RDAs meet Historic Farm Deliveries.
- The Compact provides a for FIIP delivery entitlement statement; assessed land within the FIIP is entitled to have water delivered by the Project Operator if in compliance with the applicable BIA rules and guidelines for FIIP. The delivery entitlement runs with the land and is valid so long as the land remains assessed.
- The Compact includes a shared shortage provision to meet both the RDAs and instream flows in low-water years.
- The Compact includes the low-cost block of power and net revenue provisions from the Water Use Agreement.
- The Compact includes a process to measure and allocate water and provide for within year adjustments in response to climatic and hydrologic conditions.
- The Compact includes a schedule for the implementation of Operational Improvements and Rehabilitation and Betterment projects and a process to incrementally increase instream flows as these projects are implemented.

- The Compact provides an opportunity for water saved through increased efficiency on the project to be split between instream flows and irrigation uses once target instream flows are satisfied.
- The Compact provides irrigators and the FIIP Project Operator a role in water management and the implementation of these projects.
- The Compact does not require irrigators to relinquish filed water rights claims or affect their ability to pursue those claims in the Montana General Stream Adjudication.
- The Parties made changes to various provisions in response to recommendations from the Montana Water Policy Interim Committee. For a summary of these changes, visit: http://www.dnrc.mt.gov/rwrcc/Compacts/CSKT/wpic/2014-12-12_revised_wpic_response.pdf.

The proposed Compact and Ordinance would:

- Protect valid existing water uses as those rights are ultimately decreed by the Montana Water Court or permitted by the DNRC.
- Provide legal protection for post-1996 domestic wells and permits that are currently not legally permitted on the Reservation.
- Establish a process to permit new uses such as domestic, stock, wetlands, municipal, hydropower, industrial, commercial, and agricultural uses on the Reservation.
- Provide a process for changes to existing water uses.
- Provide funding for improved water measurement and water supply forecasting.
- Provide funding for habitat and FIIP improvements.
- Quantify the Tribes' water rights for all time. Recognizes Tribal instream flow rights on and off the Reservation in exchange for the Tribes' agreement to relinquish all other claims within the state.
- Provide additional water from the Flathead River and Flathead Lake (which includes an allocation from Hungry Horse Reservoir) to meet CSKT instream and consumptive water needs and provide a process to lease portions of this additional water for new development.
- Recognize existing Tribal uses, including traditional Tribal cultural and religious uses.
- Establish a joint state-tribal board to administer water use on the Reservation under a Reservation-specific law.
- Provide flexibility, local control, and certainty.

The Montana Reserved Water Rights Commission will hold public meetings to explain the Compact and seek public comment on:

- **January 9, 2015** - Ronan Performing Arts Center - 35885 Round Butte Road, Ronan MT; at **4 pm** -Public meeting with technical staff for on-Reservation irrigators; at **7 pm** - Public meeting with the MT-RWRCC on Revised Compact
- **January 10, 2015** – at **9 am** at Hilton Garden Inn Kalispell - 1840 Highway 93 South - Kalispell MT.
- **January 12, 2015** – at 7 pm at the Great Northern Hotel - 835 Great Northern Blvd., Helena MT. The Montana Reserved Water Rights Commission will take public comment and consider approval of the Revised Compact.

**Summary of Compact Provisions**

**This document summarizes key parts of two lengthy and detailed documents; please refer to the proposed Compact and Ordinance for further information on any issues of particular interest.**

The framework for the water rights settlement requires some historical background. In 1855, the Tribes entered into a treaty with the United States. In the Hellgate Treaty, the Tribes reserved an exclusive Tribal homeland—the Flathead Indian Reservation—and retained hunting, fishing, trapping and gathering rights throughout their aboriginal territory. On the Reservation, the Tribes have retained the "the exclusive right of taking fish in all the streams running through or bordering said reservation." Federal Courts have determined that this right carries with it a "time immemorial" instream flow water right to sustain fisheries. Further, the United States Supreme Court has ruled that the language in the treaty that reserves the "right of taking fish at all usual and accustomed places, in common with citizens of the Territory…" means more than the ability to dip a net into water and have it come out empty. While it has not been finally determined in all cases whether this language also carries a right to instream flow water rights, it indubitably gives the Tribes substantial claims to such rights—claims that absent a settlement would have to be resolved on a claim by claim basis through the statewide general stream adjudication and any appellate litigation that might follow. Instream flows for fishery purposes are a "time immemorial" water right, senior to all other water rights

In 1908, the U.S. Supreme Court ruled that when the United States sets aside land for an Indian reservation, a quantity of water is reserved sufficient to fulfill the purposes of the reservation and the priority date of the water right to meet tribal consumptive needs is the date of the treaty (in this case, the Hellgate Treaty of July 16, 1855). Therefore, the Tribes' consumptive rights are senior to all other water rights on the reservation.

Aboriginal and Indian reserved water rights differ from state-based water rights in significant ways: 1) the priority date for aboriginal water rights is time immemorial and the priority date for Indian reserved water rights is the date the reservation was created – *not* the date water was first put to beneficial use; 2) they are not measured by beneficial use but rather encompass all the water necessary to satisfy the purposes for which the reservation was created, including both present and future uses; and 3) they cannot be abandoned or lost through non-use. Moreover, in determining the extent of tribal water rights associated with treaties, courts must interpret the treaty language in the light most favorable to the tribes and as the tribal signatories would have understood the treaty at that time.

While the legal basis of the Tribes' claims to water rights is well established, especially on the Reservation, the full extent of the Tribes' rights has not yet been quantified. The Montana General Stream Adjudication requires the quantification and legal determination of *all* pre-1973 claims to water rights in Montana, including aboriginal and Federal reserved water rights claimed by the CSKT and the United States on their behalf. The Montana legislature established the Reserved Water Rights Compact Commission to negotiate with Montana tribes and the United States "conclude compacts for the equitable division and apportionment of waters between the state and its people and the several Indian tribes claiming reserved water rights

within the state." Section 85-2-701, MCA. The Commission has negotiated compacts for Montana's other six Indian reservations that have been ratified by the Legislature. The CSKT compact is the final compact remaining to be resolved in the State of Montana. Settlement allows for protection of existing junior uses that is not possible through litigation and leads to a more comprehensive and flexible outcome.

**Key Elements of the Proposed Compact**

**Protection of Existing Uses of Water:** The proposed Compact would provide measures to protect valid existing uses of water as decreed by the Water Court or permitted by the DNRC. It also provides a mechanism to protect existing domestic and stock uses of groundwater that are generally exempt from the State's permitting process, and provides an expedited process for new domestic and stockwater wells and replacement wells, similar to that which exists off the Reservation. There is NO metering requirement for new wells serving fewer than three homes or businesses.

The Tribes and the United States would agree to relinquish their right to exercise the Tribal water right to make a call against *any* non-irrigation water right as well as against groundwater irrigators that use less than 100 gallons per minute. The Tribes and the United States would also provide call protection for *all* water rights upstream of the Reservation, except for irrigation rights sourced from the mainstem of the Flathead River, including Flathead Lake, or the North, South, or Middle Forks of the Flathead River.

**Water for the FIIP:** The Compact includes River Diversion Allowances (RDAs) to meet Historic Farm Deliveries as defined by the Compact. The FIIP Project Operator would allocate this water among irrigators as it has always done. Internal FIIP operations would be left solely to the determination of the Project Operator. The concept of a farm turnout allowance is eliminated. The Compact includes provisions to evaluate the RDAs and adjust them if necessary to meet Historic Farm Deliveries. In the event that additional water is required to meet Historic Farm Deliveries, it would come from additional pumping from the Flathead River using money from the Montana Pumping Fund.

**Adaptive Management:** The Compact includes a process to measure and allocate water on the FIIP and to provide for within year adjustments that are necessary to address variability in water supply. The process includes:

- Establishment of comprehensive water measurement and reporting programs that are publicly accessible;
- Planning, design, and implementation of water management planning tools, including water supply forecasting methods, operational models for division of water between FIIP Instream Flows and the FIIP Water Use Right, and water accounting programs; and
- Planning for and implementation of Operational Improvements and Rehabilitation and Betterment.

**Funding:** Montana will seek funding from the Montana Legislature for implementation of parts of the settlement. Within five years of federal ratification of compact legislation, the State has committed to:

- Four million for water measurement activities;
- Four million for improving On-Farm efficiency;
- Four million for mitigating the loss of stockwater deliveries from the Project;
- Thirty million to provide an annual payment to offset pumping costs and related projects; and
- Thirteen million to provide for aquatic and terrestrial habitat enhancement.

The Tribes will dedicate part of the settlement funding they receive from the United States to fund portions of the operational improvements and the rehabilitation and betterment projects.

**Power Provisions:** The Tribes will continue to supply the low-cost block of power from Kerr Dam while they are Kerr Dan licensee and propose to use net-revenue distributions, when available, to support the settlement.

**Quantification of CSKT On-Reservation Water Rights**: The Compact would quantify the Tribes' aboriginal and reserved water rights. These include water rights for the Flathead Indian Irrigation Project, instream flow and existing uses by the Tribes, tribal members, and allottees, including religious and cultural uses. The Compact would also quantify water rights for wetlands, high mountain lakes, Flathead Lake, the Boulder and Hellroaring hydroelectric projects, and minimum pool elevations for FIIP reservoirs. The Compact does not include the hydroelectric water rights for Kerr Dam, which are the subject of entirely separate proceedings and are considered state law-based water rights.

The newly negotiated portion of the Compact addresses the relationship between the exercise of the Tribes' instream flow water rights and the river diversion allowances for the FIIP. The Compact and Ordinance also address the Tribes' instream flow water rights for streams outside the FIIP. The Tribes will defer the enforcement of these rights until enforceable flow schedules have been established that are protective of existing users on those streams, through a process set forth in the Ordinance.

**Flathead System Compact Water:** The Compact quantifies a water right to "Flathead System Compact Water." This term describes water from the Flathead River and water stored in Hungry Horse Reservoir that the Tribes may use to meet instream flow and consumptive use needs on the Reservation. The Tribes may also lease this water for use on or off the Reservation. The Compact provides access to lease 11,000 acre-feet of this water from Hungry Horse Reservoir at a fixed rate, to be administered by the State to mitigate for domestic, commercial, municipal, and industrial water development off the Reservation.

**Water Rights on Land Acquired by the Tribes:** The Tribes would own the state law-based water right associated with land the Tribes acquire on the Reservation, as those rights are finally decreed by the Water Court or permitted by the DNRC. Under the Compact, these water rights would be exercised in a manner consistent with their historic use.

**Quantification of CSKT Off-Reservation Water Rights:** Under the Hellgate Treaty, the CSKT claim off-reservation water rights to protect fishery resources. To settle these claims, the proposed Compact includes instream flow water rights for the maintenance and enhancement of

fish habitat in the Kootenai River (consistent with the fishery operations at Libby Dam under the Federal Columbia River Power System Biological Opinions and the Columbia River Basin Fish and Wildlife Program), the Swan River, and the Lower Clark Fork River. The tribes would also have five additional off-reservation instream flow rights in small tributaries that would not adversely impact existing uses.

The Compact would provide the Tribes co-ownership with Montana Fish, Wildlife, and Parks (MFWP) of existing water rights for instream flow and recreation purposes in the Clark Fork Basin, Bitterroot Basin, Kootenai Basin, and upper Flathead Basin. Co-ownership means parallel ownership—one water right with two owners that each has the independent ability to exercise the right. None of these rights would diminish the existing water supply available for new development. The Compact would also make the Tribes and MFWP co-owners of a water right formerly associated with the Milltown Dam. Ratification of the Compact by the Montana legislature would change the purpose of that right from hydropower to instream fishery, fulfilling the State's obligation under a separate legal document to maintain this right for non-consumptive instream uses. The Tribes and MFWP would work to develop joint management plans for the exercise of this right. The Compact would provide the Tribes with a beneficial interest in three contracts for the delivery of water from Painted Rocks Reservoir and Lake Como, both located in the Bitterroot Basin. These existing rights are the only rights that would be recognized for the Tribes in the Bitterroot Basin.

**Administration of Water Rights:** The Compact provides the framework for the administration of water rights on the Reservation through the Unitary Administration and Management Ordinance (or Law of Administration). It describes the process to 1) register existing uses of water; 2) change water rights; and 3) provide for new water development.

The Compact would establish a Water Management Board to administer the Compact and Ordinance on the Reservation. The Board would have five voting members: two members selected by the Governor based on recommendations from county commissions of the four on-Reservation counties; two members appointed by the Tribal Council; and one member selected by the other four members. The Department of the Interior would appoint a sixth, non-voting member. The proposed Compact and Ordinance describe the powers and duties of the Board and the process to review the Board's decisions. Neither the Board's jurisdiction nor the Ordinance's jurisdictional area would extend off the Reservation.

**Key Elements of the Proposed Unitary Administration and Management Ordinance**

The Unitary Administration and Management Ordinance provides procedures for the administration of water uses on the Reservation and the process for permitting new uses of water.

The Ordinance would be adopted in both Montana and Tribal law. It would become effective only when approved by both the Montana Legislature and the Tribes in connection with final ratification of the Compact by all three Parties. It cannot be changed by one party without the agreement of the other.

**Registration:** Water users do not need to register if they have already filed a claim in the adjudication or have received a permit or certificate of completion from the DNRC or are served by the FIIP.

The following water users would need to register their water uses with the Board:

- People with pre-1973 domestic or stock uses who did not file a claim for those uses in the adjudication.

- People with post-1973 domestic or stock uses who did not file completion forms with the DNRC (DNRC Form 602 or 605) or whose completion form was not processed by the DNRC.

- Tribal members and allottees using a portion of the Tribal water right.

**Existing Domestic Wells:** Domestic wells that have received a permit or certificate from the DNRC or registered under the provisions of the Ordinance would be fully protected from the exercise of the Tribes' senior water rights.

**New and Replacement Domestic Wells:** The proposed Ordinance provides an expedited process for domestic allowances for new and replacement wells.

New Domestic Wells: The source of water for domestic allowances can be wells or developed springs. The Ordinance describes domestic allowances for three categories:

- Individual allowances would be available to serve one home or business using a maximum of 35 gallons per minute, 2.4 acre-feet per year. This allowance would provide for irrigation of up to 0.7 acres. NO metering is required for individual allowances.

- Shared allowances would be available for up to three homes or businesses using a maximum of 35 gallons per minute and 2.4 acre-feet per year. Irrigation for two homes is limited to 0.5 acres and 0.75 for three homes. NO metering is required for shared allowances.

- Development allowances would be available for contiguous or closely grouped parcels of land under the same or affiliated ownership, including housing subdivisions or any combination of business and residential units. A development allowance would allow a combined maximum use of 35 gallons per minutes, and 10 acre-feet per year. The amount of irrigated land would be limited to 0.25 acres for each home or business within the development. Development allowances would require a measuring device on each well or developed spring.

Replacement Wells: Existing water users would be able to construct a redundant or substitute well without a change of use authorization if the rate and volume of the new well is equal to or less than that of the well being replaced and the water is from the same groundwater source as the well being replaced. The proposed Ordinance describes the process for filing a notice for the substitute well with the Water Engineer.

**Stock Water Allowances:** The proposed Ordinance provides an expedited process for new stockwater systems that use:

- Wells or developed springs that have a maximum flow rate of 35 gallons per minute and a maximum diverted volume of 2.4 acre-feet per year.

- Pits served by groundwater seepage or a non-perennial stream that have a maximum capacity of 5 acre feet and a maximum annual volume of 10 acre-feet per year.

- Tanks served by a perennial or non-perennial stream that have a maximum flow rate of 10 gallons per minute and a maximum diverted volume of 2.4 acre-feet per year.

**Next Steps**

- The Montana Reserved Water Rights Compact Commission is seeking public comment on the proposed Compact and Ordinance.

- The RWRCC has scheduled public meetings to explain the Proposed Compact and Ordinance, answer questions, and take public comment.

- The State and Tribes will conduct Legislative outreach and seek to present and explain the Proposed Compact and appendices to interested parties.

- The Montana Reserved Water Rights Compact Commission will meet on January 12, 2015 to decide whether to submit the Compact to the Legislature for approval.

- If approved by the Commission, the final Compact and Ordinance will be submitted to the 2015 session of the Montana Legislature.

- The U.S. Congress and the Tribes would also need to approve the settlement.

- After the three Parties act to approve the settlement, it would be submitted to the Water Court for final approval.

Submit written comments on the Proposed Compact or Ordinance to Mr. Chris Tweeten, Chair, MT RWRCC, 1625 11th Ave, Helena MT, 59620, or email to dnrrwrcc@mt.gov. Comments will be shared with all parties.

For copies of the proposed Compact and Ordinance and more information visit: **Montana:** http://www.dnrc.mt.gov/rwrcc/Compacts/CSKT/Default.asp and **CSKT:** http://www.cskt.org/tr/nrd_waternegotiations.htm or contact Rob McDonald, Confederated Salish and Kootenai Tribes (406) 675-2700 ext. 1222 or Arne Wick (406) 444-5700, Montana Reserved Water Rights Compact Commission.

SENATE JUDICIARY
Exhibit No. 4
Date: 2/16/15
Bill No. SB262

Montana Stockgrowers Association

INNOVATION • LEADERSHIP • EXCELLENCE

Senate Judiciary Committee,

Mr. Chairman and members of the Committee, my name is Gene Curry. I am here today representing the Montana Stockgrowers Association. I am a rancher, irrigator and current President of the Montana Stockgrowers Association.

I am here today in Support of the CSKT Water Compact. Our Support is based on policy that was passed by our membership and Board of Directors. Our membership direction was to support a negotiated water compact that protects historical water use, on and off the reservation, and our analysis shows this compact meets those critical components.

The Compact includes numerous protections for historic water users that would **not** be available through litigation. The CSKT are prohibited from making a call upon non-irrigation water rights both off and on the reservation, including all stock water rights.

Many of the off-reservation water rights granted to the CSKT are already in existence such as the Milltown Dam water right and Montana Fish, Wildlife and Parks instream flow water rights. These rights are generally junior and do not represent an additional burden on water users. In those cases where the CSKT are granted off-reservation rights with a time immemorial priority date, the rights are limited in a manner to protect historic water use. In addition, the daily flow rates for this right are exceeded approximately 90% of the time. Restrictions are placed on all of the Tribes' off-reservation water rights for the protection of historic water uses.

If the Compact is not ratified, litigation will only address the elements of the Tribes' water rights and will not provide an opportunity to attach limitations on the exercise of those rights. These water right claims filed by the CSKT will likely be larger, more senior, and will encompass a greater area of the State than those outlined in the Compact. And lastly, regardless of the outcome of the litigation, it will be expensive, lengthy, and disruptive to the current adjudication process.

As an irrigator, I can attest to the significant costs of litigation in defending your water rights. I personally have been involved in numerous years of litigation over water rights, with a significant cost to our family ranch. It is important to pass this critical piece of legislation and not force thousands of family ranchers into similar situations of this type of litigation.

In closing, I would like to thank the Committee for taking time to listen to our comments and ask for your **support** in passing this Water Compact.

Montana Stockgrowers Association
President
Gene Curry

420 N California • Helena, MT 59601 • 406-442-3420 • www.mtbeef.org

SENATE JUDICIARY
Exhibit No. 5
Date: 2/16/15
Bill No. SB262

# Senior Water Rights Coalition

PO Box 7325
Helena, MT 59602

To: Senate Judiciary Committee

RE: SB 262 – CSKT Water Compact

My name is Krista Lee Evans and I am here today representing the Senior Water Rights Coalition. The SrWRC is made up of farmers, ranchers, irrigators, and hydropower water users. We wholeheartedly support the 2015 CSKT Compact that is outlined in SB 262.

The people of Montana have two options – settle (through the Compact) or litigate. Our membership feels very strongly that moving forward with a settlement that protects existing users both on and off the reservation is a wise path.

Montana still owns all the water in the State of Montana as provided in Article IX, Section 3 of the Montana Constitution. All off reservation water rights may have the Tribe as a user – the State still owns the water. These off reservation rights are still under the Montana water rights system and are state based rights.

Some people don't like the Federal Government involvement. Unfortunately, when the issue in front of you is a tribal reserved water right, the Federal Government will be involved. Either through settlement or through litigation. The US Government has a responsibility to the tribes. Without a Compact the tribes will file for their off reservation claims to instream flow. To think that the Federal Government will not be involved in these filings is simply silly. The Feds will be involved and they have made it clear that their goal will be the protection of bull trout. One of the biggest benefits of the CSKT Compact is that it keeps the Feds out of our rivers, streams, and tributaries. The Federal Government has agreed that ALL ESA REQUIREMENTS AS THEY RELATE TO BULL TROUT are addressed through the proposed Compact. This is significant and it is worth paying attention to. To put it simply – THIS COMPACT LIMITS FEDERAL INVOLVEMENT in Montana's waters.

All water users in the state have had two opportunities to file their claims. Those of us who did not – lost their claim. Under the Compact those on the reservation who have filed their claims will still have their day in front of the Water Court. These claims are clearly protected in Article V, B, 7 of the Compact. For those on the reservation who did not file their claims – they must be treated like off reservation water users. It is not fair to the water users of the state that followed the law to not hold all water users to the same standard.

The FIIP has been the subject of much debate and discussion. A point that is important for all to understand is that the irrigators on the FIIP will have a situation that, in all honesty, puts them in a better position than other water users in Montana irrigating under a Federal Irrigation Project. There is at least one other Federal project in Montana that has instream flow requirements. Irrigators are required to meet those instream flow requirements before water for irrigation can be used – not the case for the FIIP irrigators. They get their system repaired AND the water for instream flows comes from water that is "saved" as a result of system repair and rehabilitation. Unlike irrigators under the FIIP, other federal project irrigators have no written guarantee that irrigation water will be delivered to them. No other federal project in Montana has these same protections.

As many of you have heard us say – WE DON'T WANT TO GO TO COURT – AGAIN! Any of my members that have incorporated for any number of reasons don't have an option of not hiring an attorney. They can't represent themselves. They will be required to hire legal counsel. This will be very expensive and time consuming. We know because we've already gone through it at least once. That doesn't include the cost to the State – funded by General Fund – will be at least $73 Million for the Water Court and DNRC portion of the adjudication. And this is a conservative estimate.

The Compact provides wet water on the ground. If the goal is to prove ownership of the project water rights then those who want that answer can still pursue that issue in court. Not sure why an entity would want a priority date junior to the Tribe's instream flow right but there is nothing in the Compact that precludes legal action by those that disagree.

Article III, D of the Compact makes it clear that "this right shall not be changed to any other or additional purpose, changed to consumptive use, or transferred to different ownership." That is very clear language that one would have to work at to misunderstand.

The Tribal off reservation water rights are either co-owned with FWP (retaining the existing FWP priority date and flow) or extremely limited in their conditions. None of the off reservation instream flow rights that will be owned by the Tribe allows for immediate call. They all have "conditions" that must be met prior to the tribe being able to make a call. Even once these conditions are met there are still significant protections for existing water users. For those that believe an instream flow right isn't a water right or that a hydropower right can't be changed to an instream flow right – take those issues to court. There isn't anything in the Compact that keeps you from doing so. Just don't drag all the rest of us into Court with you.

The CSKT Compact is good for Montana's economy, its citizens, and its water users. This is a reasonable settlement that protects our Montana water resources and our water users.

Please support the CSKT Compact as proposed in SB 262. It's reasonable, it's fair, and it's the responsible action for the Montana Legislature.

Sincerely,
Krista Lee Evans
(406)439-2215

SENATE JUDICIARY
Exhibit No. 6
Date: 2/16/15
Bill No. SB 262

TUCKER CROSSING RANCH
P.O. Box 957, Corvallis, Montana 59828
Roger Raynal
Ranch Manager
Wendy Raynal
Wildlife Biologist
406-961-5396 • Fax 406-961-3845

"DEDICATED TO THE ENHANCEMENT OF FISH AND WILDLIFE HABITAT AND THE PRESERVATION OF OPEN SPACE IN THE BEAUTIFUL BITTERROOT VALLEY"

February 16, 2015

To: The MT Senate Judiciary Committee

Good Morning,

My name is Roger Raynal and I am from the Bitterroot Valley. I along with my wife have managed Tucker Crossing Ranch for almost 20 years. I am currently the Vice President for Painted Rocks Water Users Association and have been on that board for approximately 18 years as a director or officer. As an organization the board has recently voted to support the Compact.

I am here this morning to stand in support of the CSKT Water Compact and would like to briefly share two points of concern with you.

First, Bitterroot agriculture over the years has worked hard in a cooperative fashion with the Montana Department of Fish Wildlife and Parks to ensure adequate fishery and habitat protection on the Bitterroot River by way of maintaining minimum in-stream flow levels during the heat of summer and early fall. The parties involved have been successful enough over the years to convince the Confederated Salish and Kootenai Tribes that they have agreed to assert no additional in-stream flow rights in the Bitterroot River under the Compact. Rather, they have agreed to becoming co-shareholders and co-owners of record with MT FWP in their pre-existing State-owned contract water and junior in-stream recreational rights on the Bitterroot River.

It hasn't been easy for Bitterroot agriculture to voluntarily reduce irrigation diversions during low water years. Even with utilizing storage water in Painted Rocks Reservoir and Como Lake during those difficult times, generally we are not able to come close to our minimum target in-stream flow rate of 400 cfs at Bell Crossing. If the compact does not pass and the tribes are put in a position of having to file their water rights, undoubtedly, a long, expensive legal battle will occur for all. The outcome of which will undoubtedly be significantly reduced diversion rates for agriculture and greater in-stream flow rates in perpetuity because the tribes would have unquestionable water-right seniority in our valley. Extremely difficult "drought years" for agriculture will become the norm and our industry in the Bitterroot will not be recognizable as it is today.

Second, if the Compact does not pass, there is also one significant impact that has not been addressed at all that I'm aware of. This concern would be the impact to present and future wetland mitigation projects, State and Federal wildlife refuges, as well as private stream habitat enhancement projects in the western half of the state. Many of these projects rely on diverted

water. As an example, our ranch built and maintains the state wetland mitigation project for the Highway 93 expansion. Also in the Bitterroot Valley is the Lee Metcalf National Wildlife Refuge… the single largest shareholder of diverted water conveyed through the Supply Ditch system. Both of these projects rely on large volumes of diverted water. What is to become of the viability of these types of projects around the state if the water rights that have been secured for their long-term operations suddenly are in question and their water delivery volumes are slashed? Additionally, what incentive will there be in the future for private investment from individuals as well as large, national conservation groups such as Trout Unlimited or especially Ducks Unlimited to build or even maintain habitat projects in this state? How is the state of Montana going to be able to meet the Federal requirements of wetland mitigation if we don't have water? Without consistent and assured access to diverted water, these valuable, and unmentioned, beneficial uses will also greatly suffer.

Thank you for your time and consideration on these points.

Roger Raynal

SENATE JUDICIARY
Exhibit No. 7
Date: 2/16/15
Bill No. SB262

**The Future of Montana and Bitterroot Agriculture Depends on the CSKT Water Compact**

Farmers and ranchers depend on our water to irrigate our crops, to water our livestock, to care for our families, and to run our businesses. Water doesn't just play a pivotal role in our everyday lives, it is central to our ability to exist and maintain our livelihoods. The importance of water—and the certainty of having reliable access to water—cannot be overstated.

Montana agriculture, down through the generations, has worked hard to secure and maintain reliable and defined water rights—and up until now, they have for the most part been just that—reliable, defined and certain. But in order for that certainty to continue, for all of Montana agriculture on both sides of the continental divide to have access to reliable water and defined water rights, we need our state legislature to approve the Confederated Salish & Kootenai Tribes Water Compact.

For those not familiar with the Montana water rights process and history, our state operates under the "Prior Appropriation Doctrine." Or, more commonly it's known as: "First in Time, First in Right," thus the one who can prove first use of the water has the first or senior right to continue using the water. It's important to remember that the Hellgate Treaty of 1855, guaranteeing the Salish and Kootenai tribes their aboriginal hunting and fishing rights, on and off the reservation, predates all agricultural water rights in Montana.

The latest, and much improved version of the CSKT Water Compact defines, through a cooperative agreement, the water rights provided to the CSKT by the 1855 treaty and protects the water rights and access to water for all other Montana water users, including all those who currently hold agricultural water rights. Rather than take the long and costly road of litigation, members of the Compact Commission have sought to take the high road and hammer out an agreement that will benefit all Montanans and water users, both on and off the tribal reservation.

Without such an agreement, the Tribes would have to file on all their water rights across their aboriginal lands in order to seek the definition of those rights—an area including all of Montana from Lewistown to the Idaho border. This would result in decades of litigation, upending the years of water right adjudication work already completed, and millions of additional dollars in court costs paid for by individual irrigators and Montana taxpayers. All of which can be avoided by the Compact agreement that has been made between the State of Montana and the Confederated Salish & Kootenai Tribes.

If the Compact fails, and the tribes file their claims with the Montana Water Court, Bitterroot irrigators will be severely impacted. The Bitterroot Valley is well known as one of the primary, off-reservation areas where the tribes can file such claims for it is their ancestral home.

For Bitterroot irrigators, the CSKT Water Compact is without question a good deal. The very fact that under the Compact the tribes have agreed to <u>not claim</u> any aboriginal in-stream flow rights on the Bitterroot River, is pretty remarkable. Rather, they have agreed to a co-ownership status with MT Fish, Wildlife, and Parks to four very junior in-stream flow rights on the main stem Bitterroot River that MT FWP now already holds. Additionally, they have asked to be listed as co-shareholders with MT FWP for their shares of the State-owned contract water from

Painted Rocks Reservoir and Como Lake. Under this arrangement MT FWP will retain the administrative responsibilities and duties of water delivery for fishery needs on the Bitterroot as they have done in the past.

We can only imagine the impact to agriculture if mandatory in-stream flow rates were to increase greatly under the tribes senior rights... agriculture in the Bitterroot Valley would never be the same. Fortunately, the tribes are comfortable with the past cooperative efforts between FWP and local agricultural interests to protect the river, its fishery, and agriculture as well. The tribe's primary concern for habitat protection is being met and they just want to have a collaborative seat at the table with MT FWP.

Across the state, the recently negotiated and revised Compact ensures that water users can continue to utilize their water rights as they always have and receive the same amount of water as they have historically held. Through the creation of a water market utilizing a rare opportunity… a newly available supply of water out of Hungry Horse Reservoir, and a system of shared shortages for the tribes and irrigators alike, the Compact also protects irrigators in low water years.

In summary, as irrigators in the Bitterroot, one of the areas impacted most by the Water Compact, we can say with certainty that the Compact will protect irrigators by providing them certainty in terms of water usage and access. Failing to approve the Compact this legislative session, the adjudication process would leave irrigators in the Bitterroot and across the state exposed to not only uncertain water rights, but to costly legal battles for decades to come.

We encourage all irrigators to take the time to personally review and support this Compact and the benefits it will provide to our state.

(Approximately **37,810** acres represented from the Bitterroot Valley below)

Teller Wildlife Refuge
Tucker Crossing Ranch
Etna Ditch
Union Ditch
Double Fork Ranch
Popham Ranch
Woodside Irrigation District
Valley Springs Ranch
Overturf Ditch
Spooner Ditch
Woods-Parkhurst Ditch
McPherson Farms
Painted Rocks Water Users Association
Supply Ditch
Kootenai Springs Ranch
Webfoot Ditch
Bitterroot Springs Ranch
Bitterroot Irrigation District
Hawkinson Ranch

SENATE JUDICIARY
Exhibit No. 8
Date: 2/16/15
Bill No. SB262

# MOUNTAIN WATER COMPANY

P.O. Box 4826 - 1345 W. Broadway - Missoula, MT 59806 - Phone (406) 721-5570 - Fax (406) 523-5090 - www.mtnwater.com

February 16, 2015

Chairman Scott Sales
Senate Judiciary Committee
PO Box 200500
Helena, MT 59620

**RE: Proposed Confederated Salish & Kootenai Tribes Water Rights Compact**

Dear Chairman Sales and Members of the Senate Judiciary Committee:

This letter expresses Mountain Water Company's support of the proposed Water Rights Compact entered into by the Confederated Salish & Kootenai Tribes, The State of Montana, and United States of America.

Mountain Water Company (Mountain) is the primary public water supplier for the city of Missoula and surrounding area, serving over 23,000 customers with a population of about 60,000. Mountain's supply comprises 70+ water rights with priority dates ranging from 1866 to 1996. Mountain's ability to acquire new water rights in the future will play an integral part in Missoula's ability to grow. Mountain takes water rights in western Montana very seriously.

Mountain supports the proposed Compact for a number of reasons, including:

- The Compact will avoid inevitable and protracted federal litigation over CSKT's water rights.
- Mountain and other water users can participate in the adjudication of any of CSKT's off-reservation water rights through the normal stream adjudication process under the jurisdiction of Montana's Water Court, as opposed to prolonged litigation in the Federal court system.
- The instream flow provisions protect recharge to the Missoula Aquifer, Missoula's only water supply.
- The Compact does not create any "new" water rights in the upper Clark Fork, Bitterroot, or Blackfoot River Basins.
- Hungry Horse Reservoir water will be leasable to support future growth in the Clark Fork watershed.

Mountain understands that all parties made significant concessions, and extends our thanks to the Compact Parties for their creative and diligent efforts in reaching this proposed settlement.

Sincerely,

John Kappes
President
Mountain Water Company

SENATE JUDICIARY
Exhibit No. 9
Date: 2/16/15
Bill No. SB262

# MONTANA STATE SENATE

SENATOR PAT CONNELL
SENATE DISTRICT 43

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STATE CAPITOL
PO BOX 200500
HELENA, MT 59620-0500
(406) 444-4800

HOME ADDRESS:
567 TIFFANY LANE
HAMILTON, MT 59840
PHONE: (406) 370-8682

COMMITTEES:
BUSINESS & LABOR
NATURAL RESOURCES
ENERGYG & TELECOMMUNICATIONS

SB 262 Testimony, 16 February 2015

Mr Chairman, Committee Members, I am Senator Pat Connell, and I represent SD43, the southern half of Ravalli County, and the headwaters of the Bitterroot River, and source of irrigation waters for the 37,000 acres that you have already heard testimony supporting the Compact.

I come before you today, having served on the Water Policy Interim Committee for the last 4 years, and as Co-Sponsor of SB261. WPIC has spent countless hours listening to both the proponents and opponents of this compact, from which testimony I concluded that the Compact was well negotiated, and a good resolution to a serious situation.

# MONTANA STATE SENATE

SENATOR PAT CONNELL
SENATE DISTRICT 43

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HELENA, MT 59620-0500
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COMMITTEES:
BUSINESS & LABOR
NATURAL RESOURCES
ENERYGY & TELECOMMUNICATIONS


As legislators who have successfully gone through the gauntlet of elections, there is a fundamental rule of debate that I recall and will remind you that is apropos to this issue: Personal threats and assaults are the hallmark of a lost argument, and Mr Chairman, reading of opponents' threats to individually litigate against legislators who support the Compact, and frankly, worse implied threats, indicate to me that the opponents have lost their argument.

In WPIC last November, during committee questioning, a member of my own County Delegation who opposed the passage of the Compact indicated that it wasn't important if

# MONTANA STATE SENATE

SENATOR PAT CONNELL
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NATURAL RESOURCES
ENERGYG & TELECOMMUNICATIONS


water irrigators would need incredibly expensive defensive litigation if the tribes were driven to file *time immemorial* water claims in the Bitterroot and elsewhere. Mr Chairman, such stridency is in political-policy fantasyland, and fails to respect the water rights of ALL Montanans

I urge you to support the negotiated resolution for EVERYONE's water rights by supporting SB262

16 Feb 2015

SENATE JUDICIARY
Exhibit No. 10
Date: 2/16/15
Bill No. SB 262

LUND LAW PLLC
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February 15, 2015

**Via U.S. Mail & Email**

Senator Debby Barrett, President of the Senate
Representative Austin Knudsen, Speaker of the House
All Legislators

**RE:** Letter Dated January 8, 2015 from Richard A. Simms

Dear Montanans:

This letter is provided in response to Richard A. Simms' letter dated January 8, 2015, in which Mr. Simms mischaracterized and improperly cited Montana and federal law as related to the Confederated Salish and Kootenai Tribes (CSKT) Water Compact. Mr. Simms sent an earlier letter in which he also mischaracterized Montana law. Nov. 5, 2014 Simms letter to Attorney General Fox; Dec. 1, 2014 Lund Letter to Attorney General Fox (http://montanawaterstewards.com). Based on Mr. Simms' letterhead, he seems qualified to practice water law in New Mexico; however, when he crosses into Montana to opine on the law, it seems he has no respect, or regard, for our laws and court precedent.

1. **History of Indian Reserved Water Rights in Montana.**

Initially, Mr. Simms provides a history lesson on what he calls the relevant facts. However, in his rendition, he neglects to inform you that his facts totally ignore the Montana Supreme Court's interpretation of the key issues involved with Indian reserved water rights in Montana. In 1985, the Court decided the landmark case, *Montana ex rel Greely, et al. v. Confederated Salish and Kootenai Tribes, et al.*, 219 Mont. 76, 712 P.2d 754. In this decision, the Court extensively discussed and addressed Montana water law history, the Montana Constitution, and Indian reserved water rights The Court stated:

> Montana was admitted to statehood in 1889. As a prerequisite to admission to the Union, a federal Enabling Act required North Dakota, South Dakota, Montana and Washington to hold constitutional conventions and declare:

> That the people inhabiting said proposed states do agree and declare that they forever disclaim all right and title to ... all lands ... owned or held by any Indian or Indian tribes ... and that said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States, ...
>
> The Enabling Act, § 4 Second; 25 Stat. 676 (1889). In response to this requirement, Montana adopted Ordinance No. 1, Second (1889), and disclaimed any right or title to Indian lands. This Ordinance was "irrevocable without the consent of the United States and the people of ... Montana." Ordinance No. 1, Sixth (1889).

*Greely*, 219 Mont. at 83, 712 P.2d at 758. Based on this history and the Court's decision, Mr. Simms' rendition of history is simply inaccurate for Montana. The Montana Supreme Court has recognized Indian reserved water rights and discussed Indian reserved water rights for tribal hunting and fishing. The Court stated, "[a]ny ambiguity in a treaty must be resolved in favor of the Indians." Id. at 219 Mont. at 90, 712 P.2d at 762.

Further, the Court explained the difference between State-based water rights and Indian reserved water rights:

> State-created water rights are defined and governed by state law. See Art. IX, § 3(4), Mont. Const. 1972; § 85-2-101, MCA. Indian reserved water rights are created or recognized by federal treaty, federal statute or executive order, and are governed by federal law.

*Greely*, 219 Mont. at 89, 712 P.2d at 762. The Court then explained, that the Montana Water Use Act:

> ...recognizes nonconsumptive and instream uses for fish and wildlife. It is sufficiently broad to allow adjudication of water reserved to protect tribal hunting and fishing rights, including protection from the depletion of streams below a protected level.

*Greely*, 219 Mont. at 91, 712 P.2d at 763. Also, the Court found that for the tribal uses which existed before the creation of the reservation, these uses have a "time immemorial" priority date. *Greely*, 219 Mont. at 92, 712 P.2d at 764.

Based on the history of Montana, Montana laws and Constitution, and the Montana Supreme Court's ruling, Mr. Simms has been **inaccurate** in the following statements:

- Mr. Simms wrote, "Prior to 1859, the Flathead Reservation did not exist, and the Tribes did not *own* 'all the water in, on and under the Reservation.'"
    - Actually, according to *Greely*, the Tribes owned water prior to the creation of the reservation. *Greely*, 219 Mont. at 92, 712 P.2d at 764.

- Further, in the seminal case establishing Indian reserved water rights, *Winters v. U.S.*, the Supreme Court observed that prior to the creation of the reservation: "The Indians had command of the lands and the waters, command of all their beneficial use, whether kept for hunting, 'and grazing roving herds of stock,' or turned to agriculture and the arts of civilization." *Winters v. U.S.*, 207 U.S. 564, 577 (1908).

- Mr. Simms wrote, "The United States Supreme Court, on the other hand, has never reached any of these legal conclusions in federal reserved water rights litigation, and it is highly unlikely that the Court ever will."
  - Actually, the *Greely* Court cited several federal cases, including a United States Supreme Court case, supporting its reasoning. *See Greely, supra.*

Maybe Mr. Simms is an expert water attorney in New Mexico; however, he has apparently failed to research and understand Montana water law. Unquestionably, he has erred in the basic facts underpinning his legal opinions.

**2. Inaccurate Depiction of Water Volumes in the Compact.**

"Lies, damned lies, and statistics," according to Mark Twain, is a phrase describing the persuasive power of numbers, particularly the use of statistics to bolster weak arguments. Mr. Simms' use of numbers in his letter demonstrates the truth of this phrase. Further, one cannot check Mr. Simms' math or actual numbers because his source material is not provided with his letter.

It is very possible that Mr. Simms does not understand how Montana quantifies instream flow rights. On this issue, the Montana Supreme Court stated:

> The right to water reserved to preserve tribal hunting and fishing rights is unusual in that it is non-consumptive. A reserved water right for hunting and fishing purposes "consists of the right to prevent other appropriators from depleting the stream waters below a protected level in any area where the non-consumptive right applies."

*Greely*, 219 Mont. at 93, 712 P.2d at 764. Based on the large numbers that Mr. Simms used in his letter, he must have attributed consumptive use measurements for instream flow rights. Instream flow rights are usually not measured in the same manner as consumptive use rights. Since instream flow is not a consumptive use, a flow rate is assigned based on how much flow will remain instream. Consumptive use rights typically have a flow rate and volume cap to how much water can be removed from a source and at what rate. It appears that Mr. Simms has again failed to grasp basic principles of Montana water law and has instead added all flow rates together, regardless of the type of right, to manufacture a number that support his clients' agenda, but not reality.

In addition to Mr. Simms inaccurately throwing numbers around to make his arguments, he fails to explain that the 2015 version of the Compact provides irrigators

with an enforceable right. Prior to the 2015 Compact, the irrigators had no delivery entitlement, and were subject to the whims of whomever was managing the project at the time. However, the current version of the Compact, which is up for your consideration this session, has remedied this issue with the 2013 Compact. Therefore, all of Mr. Simms' arguments related to water delivery are not only a misuse of numbers, they are also unfounded because the irrigators now will have an enforceable right that did not exist prior to the 2015 Compact.

### 3. Off-Reservation Flows Are Not a Conspiracy for Control.

In the third section of his letter, Mr. Simms again illustrates his ignorance of Montana laws related to Indian instream flows. Instead of relying on case law like *Greely,* Mr. Simms argued that the "Tribes' claim that they own all of the surface and ground water on the Flathead Reservation." The reality is that the Courts have found that tribes own the water on their reservations. *Greely*, 219 Mont. 76, 712 P.2d 754; *Matter of Beneficial Water Use Permits*, 278 Mont. 50, 923 P.2d 1073 (1996); *Salish & Kootenai Tribes v. Stults*, 2002 MT 280, 312 Mont. 420, 59 P.3d 1093.

Instead of basing his arguments on correct legal principles, Mr. Simms posited a conspiracy theory that the CSKT's goal is to utilize the instream flows to control water rights. This wildly inaccurate claim is apparently intended to incite hysteria. It has no basis in reality, in law, or in fact.

### 4. Mr. Simms' Numbers for Acre Feet are Ludicrous.

Mr. Simms argued that the historical duty of water for the irrigation project was 4.7 acre feet per acre. It seems that his numbers were picked up from a report that inaccurately predicted potential irrigation numbers based on hypothetical outcomes after the building of the irrigation project. *See* Melissa Hornbein's February 2, 2015 letter to Sen. Chas Vincent.
(http://dnrc.mt.gov/rwrcc/Compacts/CSKT/3_letter_to_senator_vincent_response_to_simms.pdf).
If Mr. Simms would have bothered to check, he would have found that the irrigation project is in climatic area III and that water use standards indicate that a water duty of 4.7 acre feet per acre is at least an acre foot *in excess* of the highest demand in this zone. Mr. Simm's assertion is ludicrous based on the area of the project and how much water an irrigator could actually utilize on his crops.

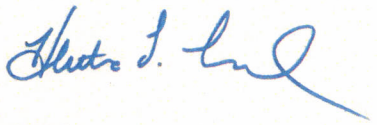
## CONCLUSION

In conclusion, Mr. Simms has failed to take the time to review and/or understand Montana law related to water rights, Indian reserved water rights, and water rights adjudication. Instead, he has shown a pronounced ignorance of the compact process and underlying legal authorities in Montana.

As you know, Montana's farmers and ranchers are key contributors to Montana's number one economy, agriculture. We should not allow out-of-state attorneys with

minimal understanding or experience with Montana law to (under cover of a law degree) advocate an outcome that would severely harm agriculture statewide. Please stand strong against those who have no real interest in protecting Montanans, their property, and their economic interests. Please support the passage of the CSKT Compact.

Sincerely,



Hertha L. Lund
**LUND LAW, PLLC**
Lund@Lund-Law.com

cc. Governor Steve Bullock

# CSKT Compact is Not a Taking of Water Rights

By: Hertha L. Lund for Commonsense Citizens for the CSKT Compact
2/13/2015

Many rural legislators have voiced their concerns that they did not want to vote for legislation that took anybody's property right. As they know, pursuant to Montana law, a water right that has been duly filed with the Water Court in accordance with the Water Use Act, is *prima facie* evidence of a property right, so long as the water right has not been abandoned due to nonuse. Who owns water will control much of what happens in the future in Montana. Therefore, it is very important to make sure that nobody's water rights are taken by passage of the Compact or any other piece of legislation.

## Decision Tree for a Takings Analysis:

First, the court has to determine whether the claimant has a property right that can be taken by government action. Second, the court has to determine whether the government action is a *per se* taking. That is, did the government physically take the property or did the government action deprive the property of 100% of its economic value.

### 1. Is There a Property Right:

For a taking to occur, an individual would have to have a property right, as defined by state law. More than two decades ago the U.S. Supreme Court held that, "[p]roperty interests . . . are not created by the Constitution. Rather, they are defined by existing rules or understandings that stem from an independent source such as state law." *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 161 (1980) (*quoting Board of Regents v. Roth*, 408 U.S. 564, 577 (1972)). The Federal Circuit Court of Appeals has stated, "[t]he Constitution neither creates nor defines the scope of property interests compensable under the Fifth Amendment," which interests instead are defined by "'existing rules or understandings' and 'background principles' derived from an independent source, such as state, federal or common law." *Maritrans Inc. v. United States*, 342 F.3d 1344, 1352 (Fed.Cir.2003)(*quoting Lucas v. South Carolina*, 505 U.S. at 1030).

Under Montana law, in order to have a property right in water, that individual had to have filed for that water right in 1982 or 1996 pursuant to the Water Use Act. M.C.A. § 85-2-221. *Matter of Yellowstone River*, 253 Mont. 167, 832 P.2d 1210 (1992).

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Therefore the question is: Did any of those claiming a taking, file upon their property so that they have a property interest pursuant to Montana law? The opponents' writings are vague on this issue; however, it appears that three parties, the CSKT Tribes, the Joint Board of the Flathead Irrigation Districts, and the United States government all filed on the irrigation claims that go with the irrigation project. The Compact specifically states that nothing in the Compact changes fee owned land or authorizes the taking of any water right. SB 262, Article V(B)(7) & (24). Therefore, regardless of whether there is a CSKT Compact, any of the entities that filed pursuant to the Montana Water Use Act will have their day in the Montana Water Court during the ongoing adjudication proceedings. If there is somebody now claiming a water right in the irrigation project, who has not filed pursuant to the Montana Water Use Act, then that person does not have a property interest in a Montana water right, regardless of whether the Compact passes the Legislature.

**2. What is the Nature of the Government Action:**

The United States Supreme Court explained that the most important takings inquiry was the impact of the government's action on the property owner:

> Although our regulatory takings jurisprudence cannot be characterized as unified, these three inquiries (reflected in Loretto, Lucas, and Penn Central) share a common touchstone. Each aims to identify regulatory actions that are functionally equivalent to the classic taking in which government directly appropriates private property or ousts the owners from his domain. Accordingly, each of these tests focuses directly upon the severity of the burden that government imposes upon private property rights. The Court has held that physical takings require compensation because of the burden they impose: A permanent physical invasion, however minimal the economic cost it entails, eviscerates the owner's rights to exclude others from entering and using her property–perhaps the most fundamental of all property interests. In the *Lucas* context, of course, the complete elimination of a property's value is the determinative factor. And the *Penn Central* inquiry turns in large part, albeit not exclusively, upon the magnitude of a regulation's economic impact and the degree to which it interferes with legitimate property interests.

*Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528 (2005).

Similar to *Lingle*, the Court of Federal Claims in *Tulare*, a case dealing with fish and irrigation water, stated:

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> Courts have traditionally divided their analysis of Fifth Amendment takings into two categories: physical takings and regulatory takings. A physical taking occurs when the government's action amounts to a physical occupation or invasion of property, including the functional equivalent of a "practical ouster of [the owner's] possession." *Transportation Co. v. Chicago, 99 U.S. 635, 642, 25 L.Ed. 336 (1878); Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 102 S.Ct. 3164, 73 L.Ed. 2d 868 (1982). When an owner has suffered a physical invasion of his property, courts have noted that "no matter how minute the intrusion, and no matter how weighty the public purpose behind it, we have required compensation."

Based on this case law, the next question is what is the nature of the State's action?

The Compact is not similar to the government physically occupying the property or requiring a water right owner to give up his/her water right to the government, like in eminent domain. Further, the Compact is not similar to a regulation, like set-back requirements that take all economic use of the property. The Compact is quantifying a senior water right for the CSKT Tribes, which may have an impact on junior water rights holders; however, the government is not taking an action that can result in a physical or regulatory taking.

**Conclusion**:

Since if an individual water rights holder has his/her water right regardless of whether the Compact is passed, and since the government's action is not a *per se* taking of property, there is no taking as result of the CSKT Compact. The Compact is a valid use of the State's authority to quantify and settle senior Indian reserved water rights.

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# The Compact Will Have Positive Impacts on the Economy

By: Hertha L. Lund for Commonsense Citizens for the CSKT Compact
2/13/2015

The Legislature's passage of the CSKT Compact ("Compact") would have positive impacts on the economy both on and off the Reservation. Water for development is difficult to find in Montana. There are nearly 60,000 square miles of the state in closed basins, over 8,500 square miles of which includes even more restrictive controlled groundwater areas. The basins that are not closed have very limited availability for new water development. Further, most of the prime water rights in the state for new development would need to go through a change application with the DNRC in order to be used for development. Unfortunately, the DNRC change application process is lengthy and typically costs tens of thousands of dollars.

**On-Reservation Positive Economic Benefits:**

The Compact provides for the lease of up to 11,000 acre-feet of water that can be designated by the DNRC for the purposes of mitigating new or existing domestic, commercial, municipal and industrial water users. Further, the Compact would provide, at a reduced cost, leased water to the Irrigation Project if needed during water shortages. The ability for agriculture or others to lease water will allow development on the Flathead Reservation that, otherwise, would likely not exist.

Additionally, on the Flathead Reservation, the Compact would provide certainty to the farmers and ranchers who currently depend on water from the Irrigation Project to irrigate their crops. With the 2015 Compact, on reservation irrigators have a right to receive irrigation water, which they did not have before. Further, with the 2015 Compact it is far more likely that agriculture will be kept whole instead of losing their water rights to senior Indian reserved water rights for instream flow.

**Off-Reservation Positive Economic Impacts:**

Off the Flathead Reservation, the Compact will provide certainty, alleviate Montana's taxpayers from having to subsidize millions of dollars more for the state-wide adjudication, and will alleviate farmers, ranchers, cities, and other water rights holders from spending millions of their own resources on legal fees. According to best estimates, if the Compact fails, Montana taxpayers will be contributing at least another $73 million dollars in order to pay for adjudication. Further, additional costs to water rights holders could be as high as *$1.8 billion*.[1]

Additionally, while the Water Court is adjudicating the estimated 10,000 claims of the Tribes, every water right that is impacted will have an uncertain status. This uncertainty will impact every appraisal. Appraisal values impact sales, mortgages and operating loan values.

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[1] 10,000 claims x 36 months for resolution of each claim (conservative estimate of adjudication time) x $2,500 -- $5,000 per month (conservative estimate of water court costs for attorney and expert).

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# Majority of Irrigators on the CSKT Reservation Support the CSKT Compact

By: Hertha L. Lund for Commonsense Citizens for the CSKT Compact
2/13/15

- There are three irrigation districts making up the Flathead Joint Board of Control ("FJBC") – Flathead, Jocko and Mission Districts.

- The Flathead District is the largest with a total of 88,000 acres and five commissioners on the Board.

    - Irrigators who farm more than half of the acres of the Flathead District have signed a letter supporting the Compact.

    - Trent Coleman, a Commissioner who irrigates 626.13 acres, supports the Compact.

    - Paul Guenzler, who owns 328.15 acres, won his seat on the commission by campaigning in favor of the compact.

        - The other three Flathead commissioners irrigate a total of 707 acres.

- The Jocko District has a total of 7,000 acres and three commissioners on the Board. Kerry Doney, a Jocko District Commissioner with the largest irrigated acreage (142 acres) supports the Compact. The other commissioners own 66.3 and 18 irrigated acres.

- "If you add up the administrative fees paid by the three commissioners on the Flathead Irrigation District, who do not support the Compact, they pay a total of $3,535. I pay $6,000," said Jack Horner, a rancher who irrigates more than 1,300 acres in the Flathead Irrigation District. "It is wrong that Board members, who do not have much skin in the game can take the money that I pay and use this money against my interests."

- "Those who oppose the Compact are mostly small irrigators with little skin in the game and do not need their operations to put food on the table or to pass on something to their children," explained Paul Guenzler. "The majority of large irrigators on the Flathead support the Compact and know that it is a fair deal for irrigators."

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# Passage of the CSKT Compact is a No-Brainer for Agriculture Both On and Off the CSKT Reservation

By: Hertha L. Lund for Commonsense Citizens for the CSKT Compact
2/13/2015

**The Compact is Fair:** It is fair to Indians and non-Indians, to irrigators and non-irrigators, to all water users and to those who live on the Flathead Reservation and off the Reservation. If the CSKT Compact were modeled more after the other Stevens Treaties Tribe's actions in other Western States, the CSKT Tribes could have negotiated for larger off-stream water rights and requested more immediate and larger instream flows on the reservation. Instead, the CSKT Tribes sought a Compact that fairly met their needs and had little negative impact on their neighbors.

**The CSKT Compact is Good for the Economy:** The CSKT Compact is good for the economy both on and off the reservation because it provides certainty, eliminates water rights holders from having to defend their rights in the Water Court, and it frees up at least 11,000 acre feet of water for new development.

**The CSKT Compact Saves State Taxpayers and Individual Water Rights Holders Money:** Without the Compact Montana taxpayers would have to pay at least $73 million for Water Court and DNRC adjudication costs, which is substantially more than the $55 million attached to the Compact, of which only $8 million would be due in this biennium. If the CSKT Tribes are forced to file their 10,000 claims with the Water Court, instead of these claims being settled by the CSKT Compact, then many water rights holders from across Montana will have to hire attorneys and re-enter the legal battles fought in adjudication. These legal battles and the reopening of the objection process would cost farmers, ranchers, cities and other water rights holders millions of dollars in legal fees.

**The CSKT Compact is on Solid Legal Footing:** The Compact is Constitutional and provides the irrigators on the Flathead Reservation with a delivery right, which is more of a property right than irrigators had prior to the Compact. Further, no Montana attorney with a valid license has signed a document that argues that the Compact is unconstitutional.

**The CSKT Compact Would Provide Certainty**: Certainty of water rights is important when farmers and ranchers pursue appraisals to secure operating or other loans.

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# The CSKT Compact Would Protect Montana from ESA Impacts

By: Hertha L. Lund for Commonsense Citizens for the CSKT Compact
2/13/2015

The Legislature's passage of the CSKT Compact ("Compact") would provide protection to Montana water users from the federal government's regulatory enforcement of the Endangered Species Act ("ESA"). The Bulltrout is listed as a threatened species, which means that federal agencies have a duty to consult with the United States Department of Fish and Wildlife Service to address impacts of federal actions related to the fish and its habitat. If the Legislature passes the Compact, due to the elaborate scientific modeling conducted by the Tribes, it is highly likely that the USFWS will rely on the CSKT Tribes' in-stream flow rights as adequate to meet Bulltrout needs.

In 2010, BIA and USFWS completed a consultation and biological opinion that addressed the impacts of the operations of the federal Flathead Indian Irrigation Project (FIIP). Because the 2010 USFWS Biological Opinion is set to expire, BIA and USFWS have reinitiated consultations. FIIP operations must be covered by a valid Biological Opinion.

**ESA Impact <u>With</u> the Compact:**

If the Legislature passes the Compact, then it is highly likely that the USFWS will find that the CSKT Tribes' science and protections of in-stream flows needs meets the requirements of the ESA. This would mean that Montana water users would not be subject to decades of regulatory public process that would occur when the USFWS determined the biological needs of the Bulltrout. Further, due to the Compact meeting the needs of Bulltrout, Montana citizens and water users would not be subject to decades of expensive litigation caused by environmental groups due to the ESA.

**ESA Impact <u>Without</u> the Compact:**

If the Legislature fails to pass the Compact, then BIA and USFWS will have to develop a biological opinion without the improvements contained in the Compact. A biological opinion can take years to develop and oftentimes results in multiple lawsuits by environmental groups. In Washington State, agriculture and other water users have spent hundreds of thousands of dollars on lawsuits related to Salmon and the ESA. On a number of occasions challenging biological opinions addressing the impacts of irrigation diversions, environmental lawsuits have been successful, and when fish and agriculture or other out of stream uses compete, the fish win.

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SENATE JUDICIARY
Exhibit No. 11
Date: 2/16/15
Bill No. SB262

LAKE LAND COMPANY, LAKE FAMILY FARM
DAVID LAKE, DANIEL LAKE, PATRICK LAKE, TIMOTHY LAKE
35822 SPRING CREEK RD.
RONAN, MT. 59864
FEBRUARY 13, 2015

RE: SB262 SUPPORT

HONORABLE SENATORS:

WE ARE A THIRD GENERATION FARM OPERATION LOCATED IN THE MISSION VALLEY NEAR POLSON AND RONAN. OUR GRANDPARENTS HOMESTEADED HERE IN THE 1930'S. THEY RAISED FIVE CHILDREN. OUR FATHER DON, AND HIS BROTHER LEROY FARMED TOGETHER FOR FORTY YEARS. IN THE EARLY 1980'S THE FOUR OF US, DAN, DAVID, PAT AND TIM STARTED FARMING TOGETHER. WE ARE ALL COLLEGE GRADUATES AND OWN AND OPERATE A 2700 ACRE SEED POTATO, WHEAT, BARLEY AND OAT OPERATION.

WATER IS IMPORTANT TO US. RISK IS AN INHERENT PART OF WHAT WE DO. WE ARE SUPPORTING THE WATER COMPACT BECAUSE WE FEEL IT IS THE BEST WAY TO MOVE FORWARD AND AVOID COSTLY LITIGATION. THE COMPACT AS WRITTEN GIVES US REASONABLE ASSURANCE THAT WE CAN CONTINUE TO OPERATE OUR 2000 ACRES OF IRRIGATED FARM GROUND.

WE HAVE ALWAYS CONSIDERED OURSELVES GOOD NEIGHBORS AND FRIENDS. WE HAVE LIVED AND WORKED HERE ALL OUR LIVES. THIS VALLEY IS HOME. IT IS PART OF WHO WE ARE.

**WE SUPPORT SB262**

THANK YOU.

DAVID LAKE

DAN LAKE

PAT LAKE

TIM LAKE

SENATE JUDICIARY
Exhibit No. 14
Date: 2/16/15
Bill No. SB 262

This Compact is vastly different from Compacts negotiated with the six other tribes.

It is precedent—setting in that it does extend outside reservation boundaries. In other compacts non-Indians dwelling on the reservations were treated the same as other citizens of Montana. Not so in this proposed agreement! Proponents claim that equal protection under the law concerns are not legitimate ones but the facts remain.

Not one of the other compacts sets up a Unitary Management Authority. Not one gives that kind of entity authority to control allocation of water involving generation produced at four hydro-electric dams.

We are told that "time immemorial" is mentioned 11 times in the documents where referencing tribal water rights, but we understand that term is based on folklore and has not been recognized in the court cases applicable to this situation. But it would cede headwaters rights to the tribes, which would put downstream water uses at their discretion.

Instead of saving litigation claimed by proponents, this would result in hundreds of water users rights placed at risk and in a position of having to file actions to defend those rights. We know that the U.S. Justice department would provide counsel to the tribes but what of the hapless Montanans who have complied with all Montana Water Laws and by provisions of this compact yet see their water rights literally sold down the river. Instead of eliminating litigation, this compact will necessitate more—it just depends on who pays and who can afford to pay.

Thank you, Aubyn

SB 262

For the record, my name is Aubyn Curtiss

I have served Lincoln County 24 years here, eight years in this chamber and sixteen years in the House. Though termed in 2010 I still speak not only for myself but many others who could not be here today

I speak in opposition to SB 262. The Compact flies in the face of Article IX of Montana's Constitution and its adoption would render our Montana Water Court a paper tiger. It exempts the CSKT from compliance with the same terms of Montana's adjudication process as other water users.

In all honesty it should have "TRUST US" stamped across page after page in the extensive document.
Trust us that this is good for Montana
Trust us that it will save litigation
Trust us that senior water rights will be protected
Trust us--Farmers & Ranchers believe this is good for them
Trust us that waiver of the quantification requirement under the adjudication system is acceptable in a water court
Trust us--grant immunity from liability to those engaged in the process
Trust us and vote either up or down, but no amendments

What a farce! Why then conduct a hearing such as this if legislators are unable after deliberation to determine any changes or clarifications. Can it be that the only place where Montana's constitution is cited in these hundreds of pages is where authorization for granting the 55 million of state dollars to the tribes is mentioned?

**Aubyn Curtiss**

**From:** "Aubyn Curtiss" <aubyna@interbel.net>
**To:** "Aubyn Curtiss" <aubyna@interbel.net>
**Sent:** Saturday, February 14, 2015 9:40 PM
**Subject:** Questions of Senator Vincent & the Judiciary Committee

----- Original Message -----
**From:** Aubyn Curtiss
**To:** Aubyn Curtiss
**Sent:** Saturday, February 14, 2015 9:15 PM
**Subject:** Fw: Chas Vincent CSKT Letter from aa

## Questions of SB 262 Sponsor Chas Vincent

(1) Nowhere have you shared with Lincoln County citizens the reasons you rejected the CSKT documents presented before the 63rd Legislature. How were flaws you perceived corrected, and where are the corrections shown in the January 2015 revision document?

(2) Antennas are raised when entities request immunity from liability related to their actions or decisions they make. For what reason are our legislators asked to grant that kind of immunity to those involved in this compact?

(3) When our Legislature passed legislation to adjudicate Montana's waters, it was with the understanding that if we did not do this, the federal government would. The adjudication process mandated that all waters in the state would be quantified, location where water was being put to a beneficial use and by whom. The CSKT have never done that, and now this compact, if adopted, would put their expressed needs ahead of those who have jumped through the hoops and complied with Montana water laws. Furthermore these water users have made considerable investment in diversions, irrigation , and deivery systems. The adjudication system is incomplete without participation of all water users.

(4) The Kootenai/Salish Tribes' claim to special treatment under the Hell Gate Treaty, according to some more conversant with tribal laws than I, is apparently facing sharp dissent relating to their adoption of the status they did in October of 1935. Has anyone researched that issue thoroughly and where can be found documentation of their true status and eligibility to claim treaty rights? Fishing rights and water rights are two separate things!

(5) We had big concern about what Montana would receive for the $ 55 million we appear to be committed to spend, and even more puzzled that the federal government was willing to spend $1.2 billion upon adoption of the Compact. Millions of dollars are being spent to lobby this bill through the legislature. The Tribes have contracted with an entity to do that for them and it would seem that Farmers & Ranchers for Montana may have engaged the same firm to do the same thing. Are the two entities connected? How can we find out?

(6) What does Montana stand to gain? We have been told only that it will protect all water in the state and save much litigation. Litigation by whom? We also know that the U.S Justice Department will provide counsel for the CSKT, but who will provide counsel for hapless Montanans who have complied with all Montana Water Laws and yet by provisions of the compact may see their water rights literally sold down the river?

(7) We have come to perceive that Farmers & Ranchers for Montana is not an organization of family farmers and irrigators, but a front group which has been instrumental in hiring a world class public relations firm (Mercury)to initiate what appears to be a multi million campaign to "educate" Montanans about the compact. We have received very little education--only glowing reports of who is supporting and that it is good for Montana.The co-chairman who introduced the Montana friendly organization, FRforM said in his January 15th news piece that he wanted "the water quantified and defined for all of us," and urged all Montanans to support it. How ironic!
The result is that the tribes are exempted from the quantification to which everyone else has complied but still would be able to oversee allocation of water on the reservation and in eleven off reservation counties. Is that a "fair deal?" Just who is calling the shots?

Please help us to understand the fairness of that when making whatever deals have been made, and with whom. It is essential that the public know.

(8) Where in the document does it guarantee that existing Water Rights and volumes will continue to be honored?

(9) Where can be found the risk analysis Sen Vincent indicated to someone he was in the process of drafting the first week in January?

Sorry to be so persistent but so many thanks for taking time to respond.

Aubyn Curtiss, Lincoln County (One of the eleven off-reservation counties in the Clarks Fork Basin)

Senator Aubyn Curtiss, termed in 2010

EXHIBIT NO. 15
DATE 2-16-15
BILL NO. SB 262

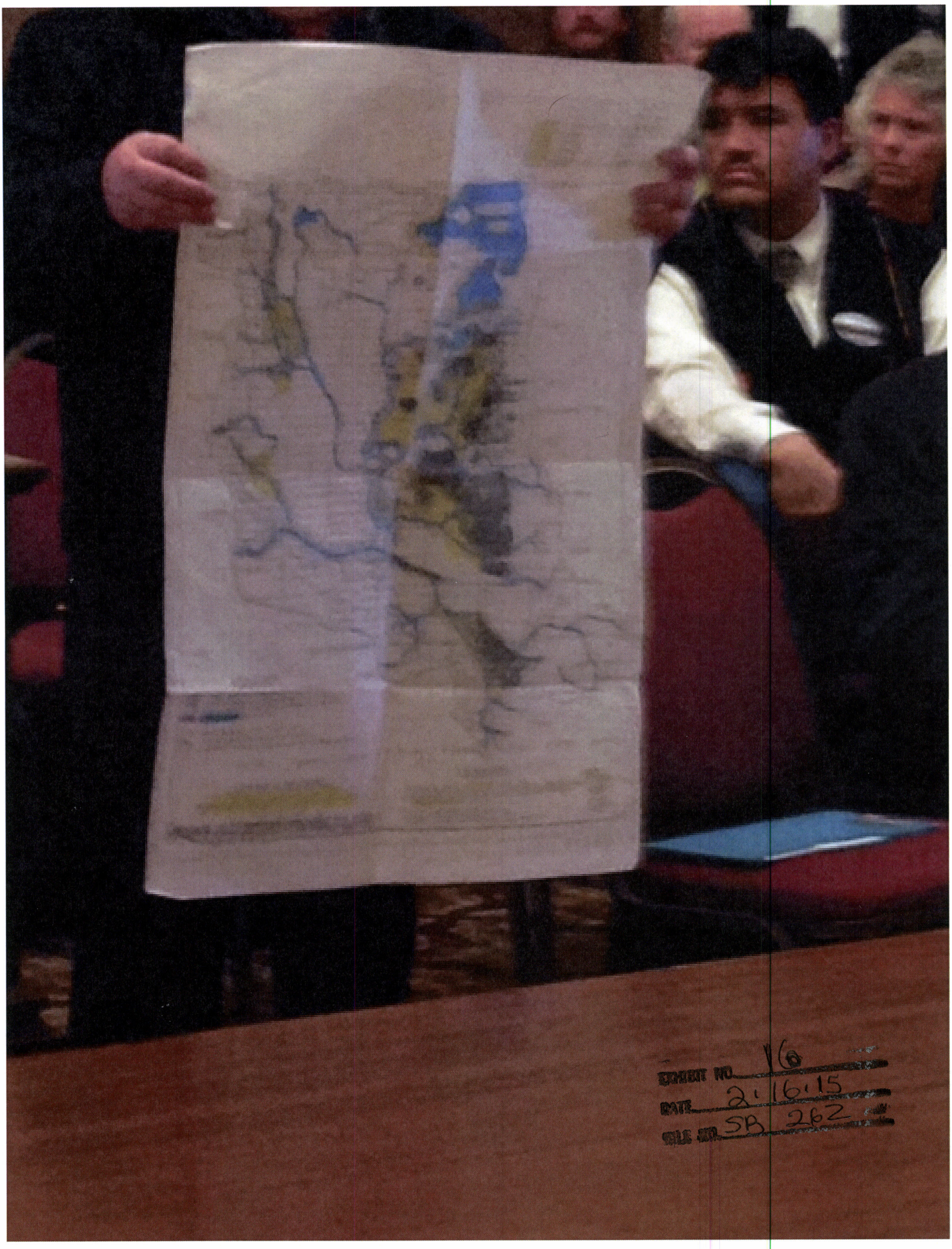
EXHIBIT NO. 16
DATE 2.16.15
FILE NO. SB 262

SENATE JUDICIARY
Exhibit No. 16
Date: 2/16/15
Bill No. SB262

Mr. Chairman, members of the Committee,

My name is Ross Middlemist, R-O-S-S M-I-D-D-L-E-M-I-S-T

My family has ranched in the Dixon area for 102 years. Our ranch is 3000 acres, 470 of which is irrigated. With the help of our children, we run 400 mother cows. We are multi-generational ranchers; this is not a hobby farm.

Giving our irrigation water rights to the CSKT places an ominous cloud over our ranching enterprise. The CSKT Water Compact will seriously reduce the amount of irrigation water we receive and can be lowered even more from year to year.

How do we secure an operating loan with that kind of uncertainty?

Banks want projections on yields of hay and grain and calf weights. We will only be able to answer with ifs and maybes, but banks dont make loans that way.

If this compact passes, I believe our land will be worth pennies on the dollar. Our survival in the business of raising food for America could be five years or less.

I ask that you please vote NO on the CSKT Water Compact.

Thank you

Ross Middlemist
Revais Creek Ranch
Dixon, MT

# Baker Land & Cattle

SENATE JUDICIARY
Exhibit No. 17
Date: 2/16/15
Bill No. SB 262

February 12, 2015

Dear Montana Legislators:

This letter is to address the proposed compact of the CSKT. I am a fourth generation irrigator on the Flathead Irrigation district in the Camas division. The irrigators here and across the project are not satisfied with the proposed compact agreement. Even with the very few changes that were made to the compact between the state attorneys and the tribe, which has completely left irrigators without any say in the negotiation process. This in of itself is unconstitutional and there will be recourse, if this debacle is passed. After many meetings and conversations, these reasons have come to the forefront.

- The Irrigation districts should maintain their water rights for the Flathead Irrigation Project these have been filed and in the adjudication process in the state.
- Individual water rights should be given the utmost importance and protection through our state. This is where they were adjudicated and this is where they should be determined, not in Federal court, If a dispute should arise.
- The irrigation project was paid for and maintained with our land patents through a mortgage system throughout the years and also net power revenues for improvements and maintenance. Why would the state of Montana have to give the CSKT Compact 55 Million dollars for something that our forefathers had the good sense to create and pay its own way?
- With the proposed compact we will receive less than 50% of the water in our historical use.
- A unitary management board will be an unbalanced entity that will have tribal jurisdiction over non-tribal members and make decisions that other boards already have been the deciding factor on. This will be an excessive governing entity that will have to be budgeted for, and could easily be misused by special interests.
- Many irrigators both tribal and non-tribal believe that the state should hold the decision-making on the water disputes not the federal government. There will be no accountability for a waiver of immunity.

Myself and many other irrigators are not against a compact, but need to have a direct and fair agreement, one that protects our water and property rights. The currant compact does not protect our water rights and property rights. This compact needs to be transparent and definitive before we as irrigators can be in favor of it. Why should we be treated differently than the rest of the irrigators in the state of Montana? The FJBC, myself and other irrigators both tribal and non-tribal oppose the current proposed compact. PLEASE REJECT THIS CURRENT COMPACT!

Sincerely,

Jim L. Baker
President
Baker Land & Cattle Co, Inc.

[illegible]

SENATE JUDICIARY
EXHIBIT NO. 17
DATE 2/16/15
BILL NO. SB262

**Written Transcript of Meeting with E. Foust (FJBC Ex-Chairman) and Commissioner Tim Orr (Mission District Commissioner)**

**Attendance:**
~ Ed Warheim - Irrigator
~ Everett Foust (Ex-Chairman for the FJBC)
~ Tim Orr (FJBC Commissioner)
~ Joan Krantz (Ex-Irrigation FIP Clerk)
~ David Passieri – Video Recording
~ Trudy Samualson – Written Notes

**Time: 8:00 a.m.**
**Date: February 10, 2015**

- **Tim Orr:** Joan, you worked for the project, is that correct? You were the administrative assistant?
- **Joan Krantz:** Yes, actually I was hired in 1975. They had frozen a lot of the government positions, jobs, and the irrigation clerk position had been vacant for one year. Alice Brooks had been there. The Board (FJBC) hired me as the Irrigation Clerk and a secretary for George and Bill Grismeister who was the Water Master in Ninepipe. It was the fall of 75. I worked there for 17 years till 1992 when I went to the Bison Range.
- **Tim Orr:** Now, Everett Foust, you were Chairman of the Flathead Joint Board of Control, is that correct?
- **Everett Foust:** Yes, I was Chairman at that time. The issue was that we were new and we met the requirements according to the law. When 48% of the project construction cost had been satisfied, the mandate of law was that the project shall be turned over to the project users. At that time George Moon was the engineer. We talked to our attorneys and they said we (irrigation districts) needed to turn ourselves into one board. We had quite a struggle; the smaller districts thought that the Flathead District would overrule them. I said No, I thought we were all on board for everybody. Although it was mandated, the BIA would never turn the project over to just three little boards, they had to form the Flathead Joint Board of Control. George Moon, a tribal member came up from the project, he saw that the board needed to be formulated to include an 11 member elected board. We felt that the tribe should have 2 tribal members. We formulated the board at that time and I was elected Chairman.
- **Tim Orr:** Ed, were you also a member of the board?
- **Ed Warheim:** I was not on the board. I was just a farmer, irrigator. We worked our butts off. I tried to stay involved. We used to have meetings once a year in the Moiese Valley and we would try to prepare to get water to the end of the valley and ask the project to treat the moss. We dealt with the same issues year after year with no moss treatment.
- **Tim Orr:** That is one of the reasons we need local control of the project, which is true. Joan, you mentioned earlier that the (irrigator) water rights were supposed to file April 30, 1982. (HB22) The BIA and the FJBC was going to file them? Do you remember?
- **Joan Krantz:** I think originally the BIA was supposed to file them because I, we worked on it for over two years. The Hydrologist was a BIA employee and the engineer was a BIA employee. I was in a BIA position, but I was paid by the districts. We worked over two years on it.
- **Tim Orr:** On the water rights, copying the abstracts and everything on the water rights?

- **Joan Krantz:** Well, yeah. We had the DNRC forms. We had a form for each. I believe they were like a water source, like Mission Creek, Tabor Dam. We would follow it down, the hydrologist and fill out...it was actually by the land not whomever owned it. It was by legal description and there was, if I remember right, at least a couple of boxes. A lot of volume, at least 80 or 90,000 acres and I were concerned when they were not getting filed. Everett and Ray came down. I made a copy in the office. Ray Jenson, who was on the board at that time, came down in the afternoon. Everett can probably tell it better now.
- **Everett Foust:** You're right in the sense because we knew there was a deadline we have to meet. Merle was the project operator at that time and I called Merle Axtell, asking if he had that filed and he said that the Billings had not given permission. I told him that it really had nothing to do with Billings. I said we are filing on behalf of the irrigation project.
- **Tim Orr:** That's important.
- **Everett Foust:** He was a BIA employee but under the understanding that we had, was that the FJBC was hiring him from the BIA to manage the project and that he was really our employee. They were really our employee; all of these people were really our employees. They were getting their money from us. At that time the county was collecting our assessments and I remember that I used to have to sign to turn it over to the BIA since they were providing services. We came down to the deadline, I called board members and Ray Jansen, our Executive Secretary at the time, there was other board members present, although I cannot remember who all was there. I said, Ray, why don't you go and entertain Merle for a little while. I went down into the basement with Joan and told her I was there to get the records and that we were going to take them to Helena to get them filed. She almost ran to the boxes and thrust them into my hands. I took them to my vehicle and then I went back inside to tell Merle what I had done. He was just beside himself because he said they would throw him in jail. I told him that he had nothing to do with it and if there was anyone to blame it would be me. I am not worried about that right now. He called his superior in Billings. They were irate and asked to talk to me. I was glad to talk to him and asked him to give me the phone. As I remember the conversation was very threatening. He said we are going to have you thrown in jail for destroying federal property. I said let me tell you a couple of things. Number 1, you are our employee, not the other way around. Secondly, it is our money, water user money that has collected these water use filings on the entire project. To develop the project, the project land owners placed their land as security to get the repayment done and with that of course they devised at that time they had plans, the irrigators knew we had an engineer and they were a smart group of engineers. They were going to tunnel through the Mission range to tap Glacier Lake and they were phenomenal. So, anyhow, the important part was, the fellow told me they would have me thrown in jail. I told the fellow throw me in jail; I would let the newspapers know how you guys tried to stop the water users from filing their water rights and if you had not filed on their behalf they would have lost them. There was almost dead silence on the other end of the line. I told him I mean it, I would love to have you throw me in jail, I am just about as willful as I can get. He did not call my bluff and he hung up on me. We just forgot it and took the records, at that time Jean Turnage was our attorney at that time and he continued to encourage us to get that filed. I took the records up to him that day and he said he would get them up to Helena that night.
- **Tim Orr:** So Jean Turnage took them over? He was the lawyer for the FJBC?
- **Everett Foust:** He (Jean Turnage) took them over; he was the lawyer for us (FJBC). That is how the filing took place. Otherwise, has we not filed it, I am sure they would not have been filed and we would have lost them. It the same as in this case, if we don't fight, they are going to give away our water rights and nobody is going to have a complaint. My concern is this, I don't like I

say, I hope that I am never accused of being prejudiced, none the less; I have no problem with other people wanting to get everything they can get, but I think that when meeting down at the office and they had the tribal lawyers and the BIA lawyers from D.C. and our lawyers and all the people there and I just said one question to the attorneys, did Uncle Sam commit fraud when he promised the same water to two parties. To me, we should not be fighting amongst ourselves, we should join together instead...do not let the people that caused the problem initially .... If I had to move I would move, but I am not going to give up my water rights. During the war, I went in to fight for my race, for anybody not just myself. I would fight anybody today that would want to take my rights away from me as a citizen. We need to look at it not tribe against non-tribe. It has nothing to do with it; most people want to do the right thing. The question that bothers me is that I am afraid that our legislatures will not do the research that need to take place to know that background. Our attorneys before Jean came on the scene; we (FJBC) had an attorney when I first came on board. I don't know when that was. I am sure with 17 years on the (FJBC) board.....

- **Joan Krantz:** I think you were on the board before 75, weren't you?
- **Everett Foust:** Yes.... There was a big debate if the tribe had the rights to power generation, the beginning of the project, the engineers said that in order to pump water to the reservoir in Pablo they would drill a pin stock, Rocky Mountain Power, later Montana Power, said let us take that site and we will develop a full scale dam and for your interest, we will give you a cheap low cost block of power. It would provide power for the people and the project.
- **Joan Krantz:** They (Irrigators) all had a debt-lien on their land for the repayment of the building of the Project.
- **Everett Foust:** The lawyer at the time said this subject was bigger than him and that the FJBC needed to get the best Water Rights Attorneys in the country. He recommended a firm in D.C. (Sutherland, Asbill & Grath) I said if we lose the battle because the water rights went the other way or the entitlement to that cheap black of power was lost. They not only wanted all future use, but all past use...we would be liable for all uses and somebody would have to pay for it. We decided to hire the firm from D.C. and they would be an excellent source of information for others. We, Ray Jensen and I went to the Dept. of Interior (Meltzer's Office etc.) during the Turn Over, at that time Bill Coldiron, Legal Counsel for Montana Power, was hired to Chief legal counsel for the Dept. of Interior. They had room full of 20 some people, BIA rep, Dept. of Int. rep. – all attorneys representing the various parties. I got up to address the issue of the FJBC operating the Irrigation Project; we met the legal criteria and the legal contract we had with the government to take over the project. We felt we could run the project more efficiently than what had been done in the past and that we were hamstrung because we could not get any appropriations at all. That's another story. There was a young attorney, he got up and rushed to Mr. Coldiron's desk stating that he could have all the paperwork finalized within two weeks. The room was silent. Those in the room were not intending to settle this issue, as proven by the history. We wanted to know our Lien status and we asked them to research it. They came back with a paper that was provided to my FJBC Chairman replacement. In that paper it said that the water users are the beneficial owners of the power and irrigation. Now I'm not a lawyer, I don't know what that entitles me to but it must be pretty important. So, with that said, if that is the case, we must fight to protect those rights for our water users because they are our customers. We when see a threat coming from the outside, that is our method. We represent the whole entire project. Mr. Coldiron invited us into his office after the meeting. He told us he knew Montana but that we would be old men before any of this was ever settled, they did not intend to ever settle it. That upset me. We met with the BIA lawyers about 4 p.m. to give us a date to settle the issue. There were two of them there and they said we know that you are right and you

should be able to get this done, privately, but you are being sabotaged. I told them, but you know it and if I had the power I would lock you all in this room and we would have this settled before the day was out. That is where we left it. There were many blockages after that and they painted the board as unable to operate the project. George Moon, power and irrigation, wanted to buy transformers could not get appropriations for the purchase. The FJBC funded some purchases for the Dublin Gulch Sub Station on George Moon's behalf until he was able to repay it. The FJBC bought transformers and power poles due to the inability to get appropriations. If we had not got the thing paid off, they could have added debt to the loan to perform maintenance to the project. From the power division, the surplus money equal 4 or 6 million dollars was held in a fund and we asked for that money.

Partial Transcript – Amendments forthcoming.

SENATE JUDICIARY
Exhibit No. 18
Date: 2/16/15
Bill No. SB262

# EXCERPT OF COMPACT COMMISSION HEARING

## Friday - January 9, 2015

LEADER - Chris Tweeten, Attorney
Chairman, Reserved Water Rights Compact Commission

SPEAKER - Bill Myers

MR. MYERS: I'd also finally point out something that really troubles me greatly about this and it's a fundamental violation of the Constitution of the United States, of the State of Montana, and of other laws of our country.

And I've mentioned this in October of 2012, right here in Ronan, a couple hundred yards away at the other building. I asked the Tribes then, and I ask again, and I'm going to ask some questions here. But I'm going to ask five of them in a section.

I asked if I could join the Tribe, I was told no. Rhonda Swaney didn't have a quote, but Ruthie Ann Swaney gave it orally. But I found it, it took me a year and half to two years of research. And the relevant passage is from the Constitution and By-Laws of the Salish and Kootenai Tribes, Amendment II, dated 5/5/1960, according to my research. And the relevant passage says:

That you must be and possess one-fourth or more Salish/Kootenai blood to be a member of the Tribe.

That's the requirement, that's the qualification. Therefore, even though my rights are at stake here and to be ruled by this UMO or by final ability to put a call against my water upstream off the Reservation. . .This is being decided by: <u>one-quarter racial, blood purity, of lineage</u>. In this country today, after we fought a Civil War a hundred and fifty or sixty years ago, and after the Civil Rights Movement of 50 years ago, and after all the current discussion on racial relations in this country, it is fundamentally a violation of US Montana Constitution and the Civil Rights Act, and I claim, right here and now, my civil rights are being violated by this.

And so I ask this Commission these questions right now, and I'd like

an answer:

➳ Do you know of any other group, entity or corporation in this country or state – and the Tribe is a corporation, they were incorporated in 1934-'35 as you well know – do you know of any other group, entity or corporation, that if they had a requirement, that their requirement for membership, to be given control of a federally controlled power dam, water rights on and off a reservation, for hundreds of thousands of people, that the sole requirement of their membership that they be 25% White?

➳ Do you know of any other entity that would require of that?

MR. TWEETEN: Well, I'll answer your question. And then I'll – then I want – want the opportunity to explain briefly.

The answer is no. And the reason that this –

MR. MYERS: Just let me ask the –

MR. TWEETEN: Now, Mr. Myers, let me finish. The answer is no, but the reason that that's not a consequential issue, is because the United States Supreme Court has explicitly ruled that determinations there are based on Tribal membership versus non-Tribal membership, are not racial, but are rather political affiliation determinations.

And whether you agree with that or not, that's what the Supreme Court has said, so your attempt to make an equal protection argument based on a racial distinction between you and a Tribal member fails. And the US Supreme Court has explicitly addressed that issue, and told you, and everybody else, that those arguments don't hold water under the protection laws.

MR. MYERS: That is your interpretation as a lawyer, and when it goes to the Supreme Court, I – I'm preserving a right here because I think this will be referred on this issue.

But the second question is:

➳ Do you know of any organization in this country that would

require that you be 25% Black to be a member and be given all these water rights?

MR. TWEETEN: Well, the answer here is no, but it's irrelevant for the same reasons.

MR. MYERS: Then the – the next question is:

»» Do you know of any organization, corporation or entity in this country that would require that you be 25% Hispanic or Latino to get the water rights?

MR. TWEETEN: Well, you know the answer. I mean, these are rhetorical questions and – and –

MR. MYERS: And –

MR. TWEETEN: – if you want to ask about Whites or any other racial (inaudible), that would be the same.

MR. MYERS: The final one:

»» Do you know of any other organization, corporation or entity in this country, anywhere, that would require any 25% Asian-American or Lithuanian, or any other entity, to be given other people's water rights?

MR. TWEETEN: Well, not specifically with respect to water, but I suspect that the Ku Klux Klan were requiring it be White. I mean, there are organizations out there that make distinctions based on race.

MR. MYERS: I don't –

MR. TWEETEN: But – but –

MR. MYERS: (Inaudible) given water rights.

MR. TWEETEN: – as I said, the point's irrelevant, but the answer is no. I don't know of any such organization.

MR. MYERS: Well, I'm – I'm here, again – I'm concluding now by saying I think this is a violation of the Constitution of the United States, State of Montana, and my civil rights and those of many other people in Montana, to give over our rights based on one qualification.

(Loud clapping from audience.)

MR. TWEETEN: Okay. Let me – let me respond to that, please.

I can tell you that the Supreme Court receives several thousand cases every year and it gives full consideration to about 80. The – the chances of the Supreme Court taking this case is specifically quite small, especially in light of the fact that your argument is based on an ar – on assertion that the court has already thoroughly considered and rejected. So let me make that point, first of all.

Now, second, with respect to the Omaha Treaty, the distinction between water rights ownership on one hand and the navigational servitude on the other, is well established in law, and the fact that – that you may have been guaranteed the right of navigation on navigable waters within Indian Country has nothing whatsoever to do with the question of the nature and extent of the Tribe's water rights. So that's in – that's a second observation.

Third, the Compact contains a provision under which the Tribes have a – have – would receive a right to maintaining Flathead Lake level at the level that existed in 1855. I believe it's 2,883 feet, if I remember correctly. So – so that the assertion that the Compact is going to allow for the – the reduction of the level of Flathead Lake below – below what existed in 1855, it's false on that basis.

It's secondly false because the Lake levels are managed according to the per – permit for Kerr Dam, which has a – has a very extensive public participation program with respect to the management of the level of the Lake by Kerr Dam. And the suggestion that somehow the Compact is going to supersede that, I think is just flat wrong.

Now, with respect to the Omaha Treaty, the – ah – ah – you know, we – your suggestion that – that you've made that known to the – at least the Compact Commission – I can't speak for the Tribes, or the United States, but to the Compact Commission, and then – and then the – the Commission ignored the

issue, is just false.

I've read that provision, I've studied it. I've compared with a – to the – ah – ah – Hellgate Treaty. I've listened to the arguments that you've made with respect to the – the Omaha Treaty. I've listened to the arguments that the Tribes have made with respect to the Omaha Treaty, don't (inaudible) ignore your issue. In fact, the people may not agree with your legal conclusions arising from the Omaha Compact. It doesn't mean that nobody listened to you. It means they didn't agree with you. And those are two very different things.

We've studied the Omaha Treaty, we've looked at it in – in the context of the arguments that you've made. We don't think your arguments hold water. That doesn't mean we haven't listened to you, it doesn't mean we have ignored you. It doesn't mean we treated you rudely. It just means we didn't agree with your – your assertions as a matter of law, and that's still the case.

I respect you, certainly, for – for bringing these issues up and I'm actually glad you brought the Omaha Treaty to our attention, so we had the opportunity to look at it. But, having looked at it, *we don't conclude that it carries the legal force that you assert that it does*. So if you want to, you know, pick out (inaudible) ultimately achieves approval by the – by the Legislature and by Congress, and if folks want to file a lawsuit, and you specifically want to file one and raise this issue, the courts will sort it out. If – maybe we were wrong. We don't think we were but we might be. You know, courts have a habit of – of having their own minds with respect to things that are alleged in lawsuits, but until the court rules, what's in your complaint can be nothing more than an unsupported assertion, and the court's going to have to rule on it to determine whether it's – it's correct or not, as a matter of law. And I will fully acknowledge the possibility that – that however we vote, that – that we may be wrong, we make it right, that our study of the issue then produced an incorrect conclusion. But that doesn't mean that we behaved in bad faith, doesn't mean that we treated you rudely, it doesn't

mean that we've ignored your question. Just means that we don't agree with you, and – I think we certainly have had the – the authority to study those issues and – and reach our conclusions and advise our clients accordingly. Just as you do. And, you know, it just turns out that we disagree on that. And if you choose to – to bring it to the attention of the court and ask the court to decide it, I'm sure the Attorney General will go to court within the Compact and – and the court will ultimately make its decision –

UNIDENTIFIED FEMALE: Next.

MR. TWEETEN: – against (inaudible) and the Supreme Court will take the question up and – and devote its limited attention to it. But – but that's all –

UNIDENTIFIED FEMALE: Next.

MR. TWEETEN: – substantially down the road from where we are now.

MR. MYERS: A couple of points of information, so it's clear what I was saying. And you – you weren't quite accurate on the Lake level.

In your own document, it talks about preserving the Lake level at the minimum of 2883, not 93, which is the current full pool. There's a ten-foot difference, that's quite normal. Whether SCOTUS, the Supreme Court of the United States, reviews this, we both know it'll be their decision. So your – your analysis for the last 10 minutes is speculative. Just as what I'm preserving is a right to appeal.

As for the – my comments on things I've submitted being ignored, the fact is: ➳ Fact! I submitted a hundred and some pages of treaties compiled by the Tribe to you and to your lawyer, in October of 2012, as you would well know, that was supposed to be put in the record. Your own attorney, Melissa Hornbein, called me when she took over, asking how to find them. It wasn't even logged into your own record of 2012. That is a fact, sir, that I know you did not put it in

the record.

I also question whether the documents I submitted to you in my three-minute comment in Polson have been put on the record. Do you have an answer to that? Is – is all of the data and information I submitted at Polson part of the record?

MR. TWEETEN: I don't keep the Compact Commission's files. I guess I'd ask Melissa and even Stan.

MR. MYERS: My understanding is that it's not on the Internet site.

MR. TWEETEN: No.

MR. MYERS: Melissa, do you have an answer to that at this time?

MR. TWEETEN: Stan?

MS. HORNBEIN: We – we don't put all of the information we receive from the public or all of the information we generate online. There is simply too much over 35 years of negotiations. I did ask for help finding the treaty you had submitted because I was not the Commission's attorney at that time. We did find, in the files, the treaty you submitted, and you and I had well over an hour phone call discussion about it. It's still in our files, it will remain there and the information that you gave us, I – at the Polson meeting is also in our files, and we had a couple conversations about that. You also had a conversation with Stan about that – that information after the meeting. It is part of the public record, we are simply not able to post everything on our website.

MR. MYERS: My final comment on that is: If somebody submits something for the record, and much of your Commission is not even here, and many people looking at these documents are not here, and this could go to court, could be tied up for 30 years of court. My contention is: when somebody submits something significant to the record, it should be part of the record. And,

therefore, on your Internet site – and I will make a slight correction to Melissa. We were assured at the last go-around in 2012, that everything submitted to the Commission, would be part of the Internet site and posted. That did not happen. That's a fact.

MR. TWEETEN: Thanks for your time, (inaudible).

(Clapping from the audience.)

CERTIFICATE

I, Rita K. Hanson, Notary Public in and for the State of Montana, residing in Whitefish, Montana, do hereby certify:

That I did transcribe the foregoing recording and format to this transcript;

That the foregoing is a true and correct transcription of a digital audio recording as provided to me by William G. Myers, Jr.;

I further certify that I am not counsel, attorney nor relative of any party, nor otherwise interested in the event of this suit.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my seal of office this 4th day of February, 2015.

RITA K. HANSON
NOTARY PUBLIC for the
State of Montana
Residing at Whitefish, Montana
My Commission Expires
September 9, 2015

Rita K. Hanson

Rita K. Hanson, Notary Public, State of Montana
Residing at Whitefish, Montana 59937
My Commission Expires 9/09/2015

November 5, 2014

To: "Compact Commission"
CSKT
St. of MT.
From: Bill Myers
Re: A New Approach

No waste of shared water:

Capture and utilize spill and water downstream from Kerr Dam. This water in Western Montana should be shared by all of us together. This water is a great gift from our almighty Creator Father God and needs to be appreciated as a shared blessing and inheritance for all of us. We should not be fighting over our abundant water! Based on this premise I propose:

1. The possible need for a cooling off period to rebuild trust and friendship, especially before any implementation.
2. Any proposal should have a phase-in, with opportunity for further modifications/refinements. Forever is a long time and does not allow for correction and change.
3. A radical change in the compact proposal to create a win/win/win for three major groups that are currently clashing: the CSKT, the FIP irrigators, and the off reservation groups (i.e. Flathead Valley and supporters of Flathead Lake full pool).

I believe I have uncovered a way to meet the needs of the three groups, and hopefully avoid the ugliness of approximately 30 years of protracted litigation that appears on the horizon. To that end I have included a smattering from the boxes of information and data I have collected. Especially important is the datum from Kerr Dam operations from approximately 1990-2014, including both lake levels and river flows at Kerr in CFS. Also included are the Kerr re-licensing articles numbers 55-58, June 26, 1997, spelling out clearly the minimum flow regimes and ramping rates, which were agreed to by all parties, including the CSKT. Also included are documents showing schematics of the Mission Valley irrigation system, with acre feet capacity for: Tabor, Mission, McDonald, Lower Crow, Kicking Horse, Ninepipe, Pablo and other reservoirs (including the Jocko and Camas divisions). Finally the misc. articles on droughts and projected droughts and historic documents provided by Don Kude, the Kerr Project Manager for MT. Power Co. who retired I the late 1990's. I have much more that is available to facilitate a peaceful and mutually beneficial solution for all parties.

The Compromise Proposal

I. Remove all off reservation claims to water. This includes the potential to make call on Flathead River and Swan River, off reservation. The 90,000 ac. Ft. leased water disappears, and Flathead Basin above lake remains open to and through regular DNRC/State of Montana permitting. However, the tribe will have access to call for water releases from Hungry Horse to mitigate in drought for irrigation on FIP and to maintain Flathead Lake at full pool. This amount will be original 100,000 Ac. Ft. per discussions of Northwest Power Planning Council and Clerk Fork Task Force.

II. Re-tool the UMO concept, eliminating UMO with: Dual administration, with expanded Board to resolve conflicts (per other Compacts). Unresolved issues would be taken to State or Federal Court per WPIC recommendation #2. I would suggest expansion of the Board to include <u>possibly:</u>

- 3 CSKT
- 3 Federal (one @ Congessional or from BIA)
- 3 State (DNRC, FWP, Water Court)
- 3 Lake County
  - a. Commissioner
  - b. Conservation District
  - c. Elected
- 2 Flathead County:
  - a. Commissioner
  - b. Conserv. Dist.
- 1 Each other affected county, but at least Missoula & Sanders
- 3 From Flathead Joint Board, i.e., elected from irrigators.

This would give a balance of interests and assure no one group would be in total or majority control.

III. Make more water available to tribes to mitigate against drought and allow for full historic delivery of FIP water to all parties. This would replace the previously listed total of 229,000 Ac. Ft. from upstream. This water would be made available for pumping <u>up-hill</u> to Pablo Reservoir and <u>beyond!</u> The increased amount of water would be available from reducing or eliminating need to spill over Kerr Dam by increased capacity and authority to pump at the Flathead pumping station and other locations downstream from Kerr. To facilitate this, Pablo Reservoir likely would have capacity increased. In addition, options:

A. Create a series of pumps with large capacity pipe to be run uphill via the Pablo feeder canal to the main North/South feeder canal at base of Mission Mountains.

B. Install a series of pumps i.e., below Lower Crow Reservoir and other trunk lines to pump water uphill from the Flathead River to augment irrigation water coming gravity from feeder canal.

C. Build 1-4 additional dams at locations originally evaluated in the 1920's, to capture and retain water on tribal/trust land for pumping, and generate additional electricity and revenues for the tribe.

*** The key breakthrough idea that might make pumping uphill possible is what the business world calls a two-fer...that is doing two things essentially for one cost. We have all heard, and I believe agreed, that the current gravity canal system needs improvement and likely complete replacement in many areas, especially to increase efficiency. So when that is taking place, all the elements are in place to install a pumping pipeline flowing uphill in same location. The right of way/property is already acquired and in place, the excavator is needed to replace current ditch with upgrades, so it would relatively easy to dig out a slightly deeper or wider ditch to have 2 pipelines: one sealed for pumping uphill to storage or to be

used to supplement flows in the irrigation line, by staggered release into the irrigation line from the pump line tube.

This would supplement the normal flow mechanism from waters flowing down from the Mission Mountains to the feeder line and those from the Tabor feeder canal/reservoir. Thus, the water from the Flathead River and Swan River above Flathead Lake would be available in large quantities, especially during times of spill, for capture and use in the FIP project. It would no longer be necessary to quantify water depletion/diversion from the lake or rivers upstream because the take of the water is left to the FIP to take the excess water before spilled at Kerr via an increased Pablo pump canal line or after Kerr at small below dam pumping sites or dams, or best of all: both.

This concept has the additional economic benefit of keeping Flathead Lake at recreational full pool even during drought! WIN/WIN/WIN!

See enclosed documents

Bill Myers

NOV. 5, 2014

TO: "COMPACT COMMISSION"
CSKT
ST. OF MT.

FROM: BILL MYERS

RE: A NEW APPROACH

NO WASTE OF SHARED WATER:

CAPTURE & UTILIZE SPILL & WATER DOWN STREAM FROM KERR DAM. THIS WATER IN WESTERN MONTANA SHOULD BE SHARED BY ALL OF US TOGETHER. THIS WATER IS A GREAT GIFT FROM OUR ALMIGHTY CREATOR FATHER GOD AND NEEDS TO BE APPRECIATED AS A SHARED BLESSING AND INHERITANCE FOR ALL OF US. WE SHOULD NOT BE FIGHTING OVER OUR ABUNDANT WATER! BASED ON THIS PREMISE I PROPOSE:

(1) THE POSSIBLE NEED FOR A COOLING OFF PERIOD TO REBUILD TRUST & FRIENDSHIP, ESPECIALLY BEFORE FOR ANY IMPLEMENTATION.

(2) ANY PROPOSAL SHOULD HAVE A PHASE-IN, WITH OPPORTUNITY FOR FURTHER MODIFICATIONS/REFINEMENTS. FOREVER IS A LONG TIME AND DOES NOT ALLOW FOR CORRECTION & CHANGE.

(3) A RADICAL CHANGE IN THE COMPACT PROPOSAL TO CREATE A WIN/WIN/WIN FOR THREE MAJOR GROUPS THAT ARE CURRENTLY CLASHING: THE CSKT, THE FIP IRRIGATORS, AND THE OFF RESERVATION GROUPS (i.e. FLATHEAD VALLEY & SUPPORTERS OF FLATHEAD LAKE FULL POOL).

I BELIEVE I HAVE UNCOVERED A WAY TO MEET THE NEEDS OF THE THREE GROUPS, AND HOPEFULLY AVOID THE UGLYNESS OF 30 YEARS OF PROTRACTED LITIGATION THAT APPEARS ON THE

MYERS TO "COMPACT COMMISSION"

HORIZON. TO THAT END I HAVE INCLUDED A SMATTERING FROM THE BOXES OF INFORMATION + DATA I HAVE COLLECTED. ESPECIALLY IMPORTANT IS THE DATUM FROM KERR DAM OPERATIONS FROM @ 1990 – 2014, INCLUDING BOTH LAKE LEVELS AND RIVER FLOWS @ KERR IN CFS. ALSO INCLUDED ARE THE KERR RELICENSING ART. # 55-58, JUNE 26, 1997, SPELLING OUT CLEARLY THE MINIMUM FLOW REGIMES + RAMPING RATES, WHICH WERE AGREED TO BY ALL PARTIES, INCLUDING THE CSKT. ALSO INCLUDED ARE DOCUMENTS SHOWING SCHEMATICS OF THE MISSION VALLEY IRREGATION SYSTEM, WITH ACRE FEET CAPACITY FOR: TABOR, MISSION, McDONALD, LOWER CROW, KICKING HORSE, NINEPIPE, PABLO AND OTHER RESERVOIRS (INCLUDING THE JOCKO + CAMAS DIVISIONS). FINALLY, THE MISC. ARTICLES ON DROUGHTS + PROJECTED DROUGHTS + HISTORIC DOCUMENTS PROVIDED BY DON KUDE, THE KERR PROJECT MGR. FOR MT. POWER CO. WHO RETIRED @ IN THE LATE 1990'S. I HAVE MUCH MORE THAT IS AVAILABLE TO FACILITATE A PEACEFUL AND MUTUALLY BENEFICIAL SOLUTION FOR ALL PARTIES.

## THE COMPROMISE PROPOSAL

I REMOVE ALL OFF RESERVATION CLAIMS TO WATER. THIS INCLUDES THE POTENTIAL TO MAKE CALL ON FLATHEAD RIVER AND SWAN RIVER, OFF RESERVATION. THE 90,000 AC. FT. LEASED WATER DISAPPEARS, AND FLATHEAD BASIN ABOVE LAKE REMAINS OPEN TO + THROUGH REGULAR DNRC/STATE OF MONTANA PERMITTING. HOWEVER, THE TRIBE WILL HAVE ACCESS TO CALL FOR WATER RELEASES FROM

NYERS TO "COMPACT COMMISSION"

HUNGRY HORSE TO MITIGATE IN DROUGHT FOR IRRIGATION OF FIP AND TO MAINTAIN FLATHEAD LAKE @ FULL POOL. THIS AMOUNT WILL BE ORIGINAL 100,000 AC. FT. PER DISCUSSIONS OF NORTHWEST POWER PLANNING COUNCIL + CLARK FORK TASK FORCE.

II RE-TOOL THE UMO CONCEPT, ELIMINATING UMO WITH: DUAL ADMINISTRATION, WITH EXPANDED BOARD TO RESOLVE CONFLICTS (PER OTHER COMPACTS). UNRESOLVED ISSUES WOULD BE TAKEN TO STATE OR FEDERAL COURT PER WPIC RECOMMENDATION #2. I WOULD SUGGEST EXPANSION OF THE BOARD TO INCLUDE POSSIBLY:

(3) CSKT
(3) FEDERAL (ONE @ CONGRESSIONAL OR FROM BIA)
(3) STATE i.e DNRC WATER COURT FWP
(3) LAKE COUNTY (A) COMMISSIONER (B) CONSERV. DIST (E) ELECTED
(2) FLATHEAD COUNTY (A) COMMISSIONER (B) CONSERV. DIST.
(1) @ OTHER AFFECTED COUNTY, BUT AT LEAST MISSOULA+SANDERS,
(3) FROM FLATHEAD JOINT BOARD i.e ELECTED FROM IRREGATORS

THIS WOULD GIVE A BALANCE OF INTERESTS AND ASSURE NO ONE GROUP WOULD BE IN TOTAL OR MAJORITY CONTROL.

III MAKE MORE WATER AVAILABLE TO TRIBES TO MITIGATE AGAINST DROUGHT AND ALLOW FOR FULL HISTORIC DELIVERY OF FIP WATER TO ALL PARTIES. THIS WOULD REPLACE THE PREVIOUSLY LISTED TOTAL OF 229,000 AC FT FROM UPSTREAM. THIS WATER WOULD BE MADE AVAILABLE FOR PUMPING UP-HILL TO PABLO

WYERS TO "COMPACT COMMISSION"

RESERVOIR AND BEYOND! THE INCREASED AMOUNT OF WATER WOULD BE AVAILABLE FROM REDUCING OR ELIMINATING NEED TO SPILL OVER KERR DAM BY INCREASED CAPACITY AND AUTHORITY TO PUMP @ THE FLATHEAD PUMPING STATION AND OTHER LOCATIONS DOWNSTREAM FROM KERR. TO FACILITATE THIS, PABLO RESERVOIR LIKELY WOULD HAVE CAPACITY INCREASED. IN ADDITION, OPTIONS:

(A) CREATE A SERIES OF PUMPS W/ LARGE CAPACITY PIPE TO BE RUN UPHILL VIA THE PABLO FEEDER CANAL TO THE MAIN NORTH/SOUTH FEEDER CANAL @ BASE OF MISSION MOUNTAINS.

(B) INSTALL A SERIES OF PUMPS i.e. BELOW LOWER CROW RESERVOIR AND OTHER TRUNK LINES TO PUMP WATER UPHILL FROM THE FLATHEAD RIVER TO AUGMENT IRRIGATION WATER COMING GRAVITY FROM FEEDER CANAL

(C) BUILD 1-4 ADDITIONAL DAMS @ LOCATIONS ORIGINALLY EVALUATED IN THE 1970's, TO CAPTURE + RETAIN WATER ON TRIBAL/TRUST LAND FOR PUMPING, AND GENERATE ADDITIONAL ELECTRICITY + REVENUES FOR THE TRIBE.

*** THE KEY BREAKTHROUGH IDEA THAT MIGHT MAKE PUMPING UPHILL POSSIBLE IS WHAT THE BUSINESS WORLD CALLS A TWO-FER ... THAT IS DOING TWO THINGS ESSENTIALLY FOR ONE COST. WE HAVE ALL HEARD, AND I BELIEVE AGREED, THAT THE CURRENT GRAVITY CANAL SYSTEM NEEDS IMPROVEMENT + LIKELY COMPLETE REPLACEMENT IN MANY AREAS, ESPECIALLY TO INCREASE EFFICIENCY. SO WHEN THAT IS TAKING PLACE, ALL THE

EV. 5, 2014

VERS TO "COMPACT COMMISSION"

ELEMENTS ARE IN PLACE TO INSTALL A PUMPING PIPELINE FLOWING UPHILL IN SAME LOCATION. THE RIGHT OF WAY/~~PROPERTY~~ IS ALREADY ACQUIRED & IN PLACE, THE EXCAVATOR IS NEEDED TO REPLACE CURRENT DITCH W/ UPGRADES, SO IT WOULD RELATIVELY EASY TO DIG OUT A SLIGHTLY DEEPER OR WIDER DITCH TO HAVE 2 PIPELINES: ONE SEALED FOR PUMPING UPHILL TO STORAGE OR TO BE USED TO SUPPLEMENT FLOWS IN THE IRRIGATION LINE, BY STAGGERED RELEASE INTO THE IRREGATION LINE FROM THE PUMPLINE TUBE.

THIS WOULD SUPPLEMENT THE NORMAL FLOW MECHANISM ~~FROM~~ WATERS FLOWING DOWN FROM THE MISSION MOUNTAINS TO THE FEEDER LINE & THOSE FROM THE TABOR FEEDER CANAL/RESERVOIR. THUS, THE WATER FROM THE FLATHEAD RIVER & SWAN RIVER ABOVE FLATHEAD LAKE WOULD BE AVAILABLE IN LARGE QUANTITIES, ESPECIALLY DURING TIMES OF SPILL, FOR CAPTURE AND USE IN THE FIP PROJECT. IT WOULD NO LONGER BE NECESSARY TO QUANTIFY WATER DEPLETION/DIVERSION FROM THE LAKE OR RIVERS UPSTREAM BECAUSE THE TAKE OF THE WATER IS LEFT TO THE FIP TO TAKE THE EXCESS WATER BEFORE SPILLED AT KERR VIA AN INCREASED PUMP CANAL LINE OR AFTER KERR AT SMALLER PUMPING SITES OR DAMS, OR BEST OF ALL: BOTH. PABLO BELOW DAM

THIS CONCEPT HAS THE ADDITIONAL ECONOMIC BENEFIT OF KEEPING FLATHEAD LAKE AT RECREATIONAL FULL POOL EVEN DURING DROUGHT! WIN/WIN/WIN!

→ SEE ENCLOSED DOCUMENTS

Bill Myers

# KERR MITIGATION AND MANAGEMENT PLAN

## PER FERC ORDER

## ISSUED JUNE 25, 1997

## OPERATIONAL REQUIREMENTS

Article 55: The licensee shall operate the Kerr Project as a base-load facility, which precludes the load-following or peak power generation (releases and power generation are not changed within a day).

Article 56: The licensee shall maintain releases at or above the following instantaneous minimum flow, in cubic feet per second (cfs) on a continuous basis as measured at the U.S. Geological Survey Polson gage, provided that the passage of minimum flows from Flathead Lake downstream is not limited by the natural channel capacity immediately upstream of the Kerr Dam. The licensee shall manage the project in a manner that limits the occurrence of such channel capacity limitations.

### MINIMUM FLOW REQUIREMENTS

| DATES | MINIMUM FLOW |
|---|---|
| August 1 to April 15 | Continuous at 3,200 cfs |
| April 16 to April 30 | Increased from 3,200 cfs to 5,000 cfs at 120 cfs per day |
| May 1 to May 15 | Increased from 5,000 cfs to 12,700 cfs at 510 cfs per day |
| May 16 to June 30 | Continuous at 12,700 cfs |
| July 1 to July 15 | Reduced from 12,700 cfs to 6,400 cfs at 420 cfs per day |
| July 16 to July 31 | Reduced from 6,400 cfs to 3,200 cfs at 200 cfs per day |

The minimum instream flows may be temporarily modified by operating emergencies beyond the control of the licensee, or for short periods upon prior written approval from the Secretary of the Interior.

ARTICLE 57: The licensee shall operate the Kerr Project in accordance with the following between-day restrictions on flow variations as measured at the U.S. Geological Survey Polson gage, except as necessary to meet flood control requirements imposed by the U.S. Army Corps of Engineers under the Memorandum of Understanding with Montana Power Company (as amended in 1965), or as may be further amended by the U.S. Corps of Engineers subsequent to approval of the Secretary of the Interior.

### MAXIMUM BETWEEN-DAY FLOW CHANGES

| MEAN FLOW | MAXIMUM CHANGE IN FLOW (cfs) |
|---|---|
| Less than 5,000 | 500 |
| Between 5,000 and 10,000 | 1,000 |
| Between 10,000 and 20,000 | 2,500 |
| Between 20,000 and 40,000 | 5,000 |
| Between 40,000 and 60,000 | 10,000 |

The between-day restrictions on flow variations may be temporarily modified if required by operating emergencies beyond the control of the licensee, or for short periods upon prior written approval from the Secretary of the Interior.

ARTICLE 58: The licensee shall operate the Kerr Project in accordance with the following hourly maximum allowable ramping rates, except as necessary to meet flood control requirements imposed by the U.S. Army Corps of Engineers under the Memorandum of Understanding with Montana Power Company (as amended in 1965), or as may be further amended by the U.S. Corps of Engineers subsequent to approval of the Secretary of the Interior.

MAXIMUM ALLOWABLE RAMPING RATES

mean flow cfs 24 hr average — Ramping Rate

| MEAN FLOW CFS | RAMPING RATE |
|---|---|
| Between 3,200 and 7,500 | 250 cfs/hour |
| 7,500 or greater | 1,000 cfs/hour |

The hourly ramping rates may be temporarily modified if required by operating emergencies beyond the control of the licensee, or for short periods upon prior written approval from the Secretary of the Interior.

Post-it® Fax Note 7671 | Date | # of pages ▸ 2
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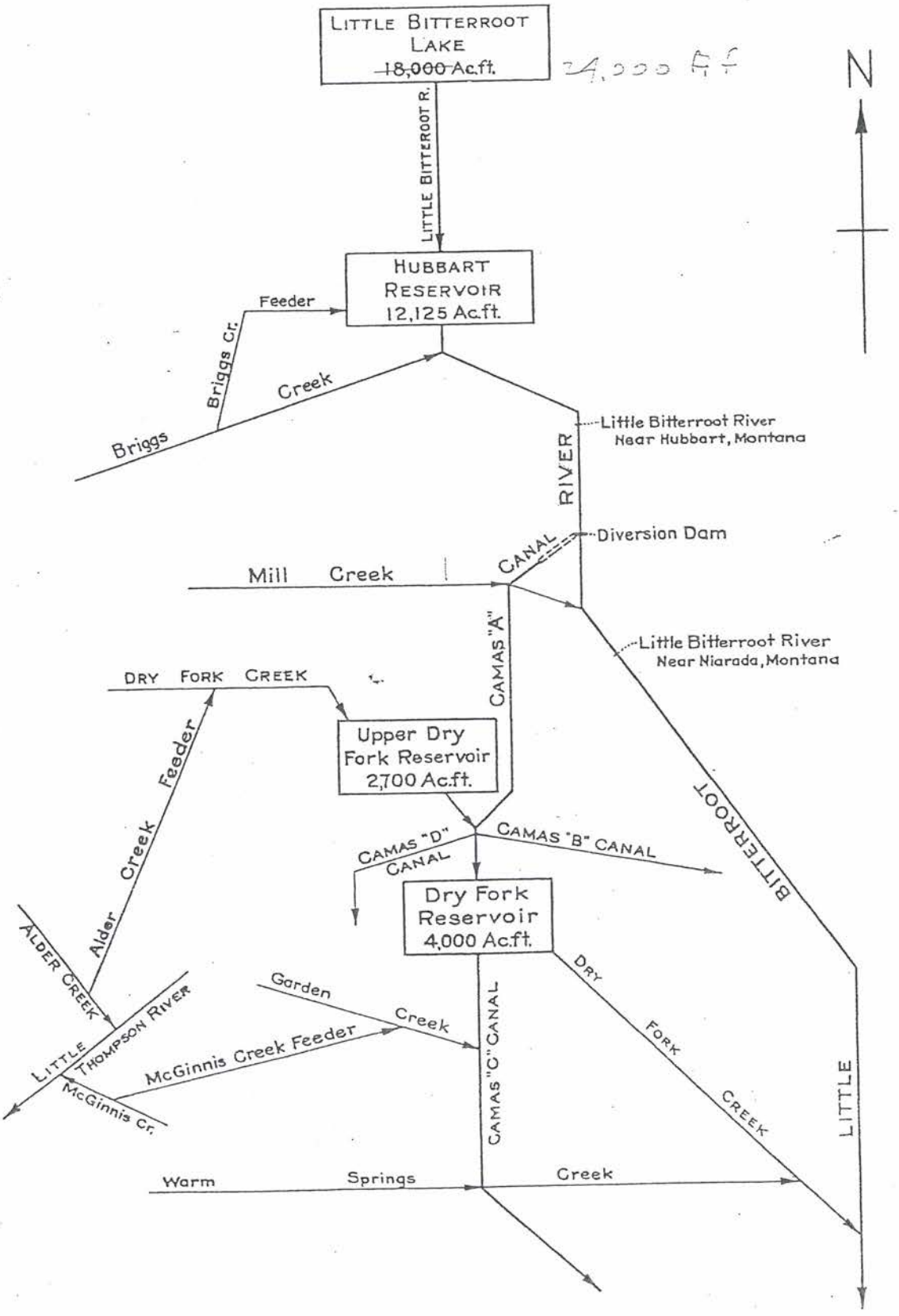
Co./Dept. | Co.
Phone # | Phone #
Fax # 761-235 | Fax #

WTR/sv

Diagram No. III, Showing Camas Division Water Supply and Distribution Features, Flathead Irrigation Project, Montana



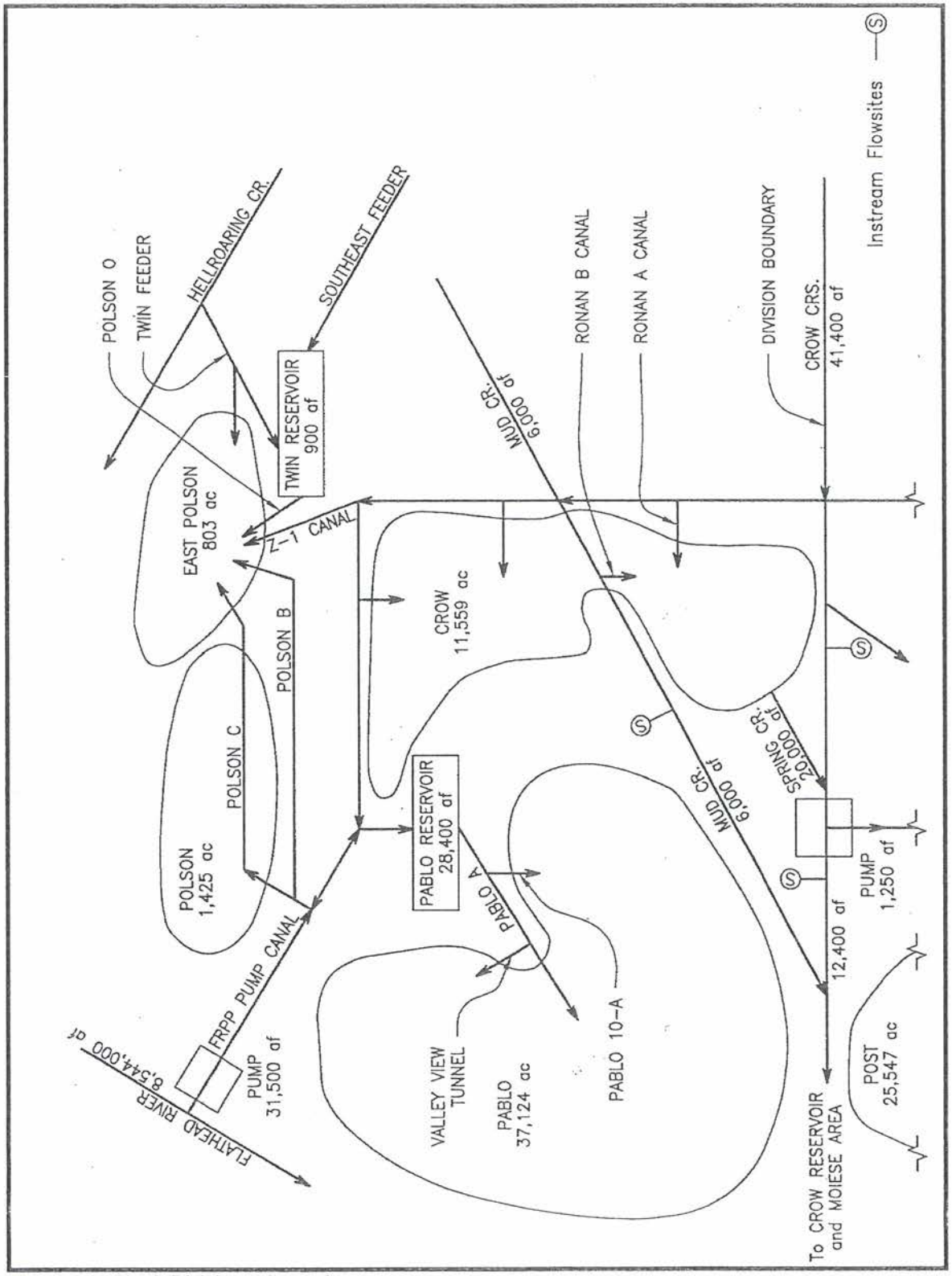
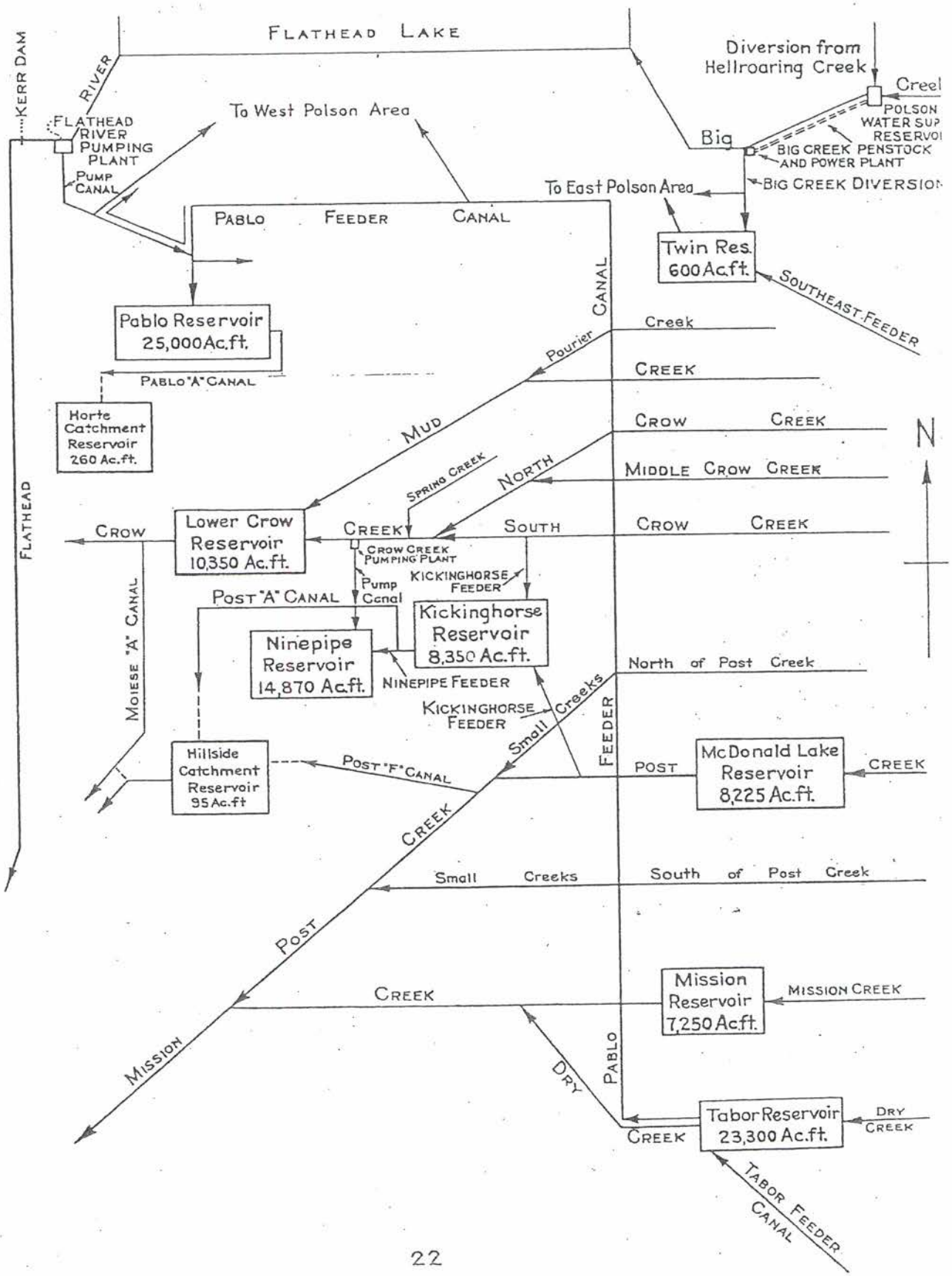



Figure 2-2. North Division schematic.

Diagram No. 1, Showing Jocko Valley Water Supply and Distribution Features
Flathead Irrigation Project, Montana

# Diagram No. II, Showing Mission Valley Water Supply and Distribution Features, Flathead Irrigation Project, Montana



fied as irrigable in 1930, and covered by construction charges, differed from the irrigable acreage as proposed following the reclassification of 1943-1944, and in many cases both of these figures differing from the acreage actually assessed for operation and maintenance charges, made it necessary to write many follow-up letters and to call on many of the landowners living on the project to explain the details of the adjustments proposed.

About 85 per cent of all landowners contacted agreed substantially with the results of the analysis made by the Agricultural Economics Unit and signed agreements to adjust their irrigable acreage to conform to the 1943-1944 land classification survey. Inasmuch as the total of class 1, class 2 and class 3 land within a farm unit was used as the base in making adjustments in irrigable acreage, it was the desire of about 10 per cent of the landowners contacted to retain the acreage so classified in 1930 as the irrigable area as now determined. Approximately 5 per cent of the landowners either refused to sign the agreements submitted to adjust their irrigable acreage or did not reply to the letters that were sent them with agreements enclosed. In these instances, the 1931 acreage was allowed to stand as the irrigable acreage as now determined except in cases where errors were made in the 1930 classification or where lands for highway or canal right-of-way have been taken since the 1930 classification was completed. Based upon results thus obtained, the irrigable acreage of the project has been determined and is shown in Appendix "A" of this report for every 1/16 part of a section and the tabulations contained therein are based on agreements or letters contained in Appendix "B" of this report.

Table 27 has been prepared to show the irrigable area of the Flathead Irrigation Project. The figures represent the results of the land classification completed in 1943-1944 as agreed to by the landowners of the Flathead Irrigation Project.

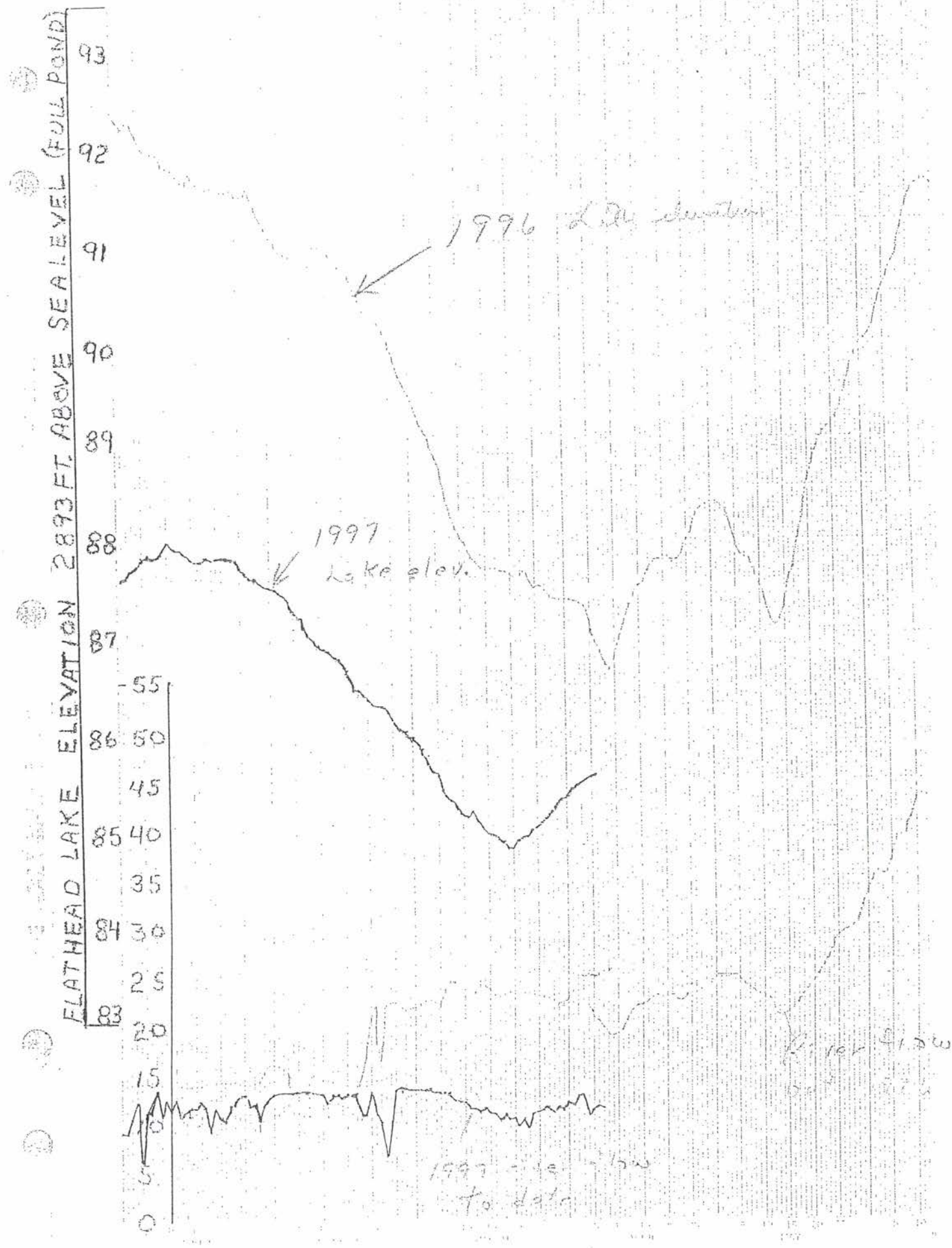
Table 27 - Irrigable Area of the Project by Divisions, Subdivisions and Parts as Determined by the Agricultural Economics Unit, 1945-1946.
Flathead Irrigation Project, Montana

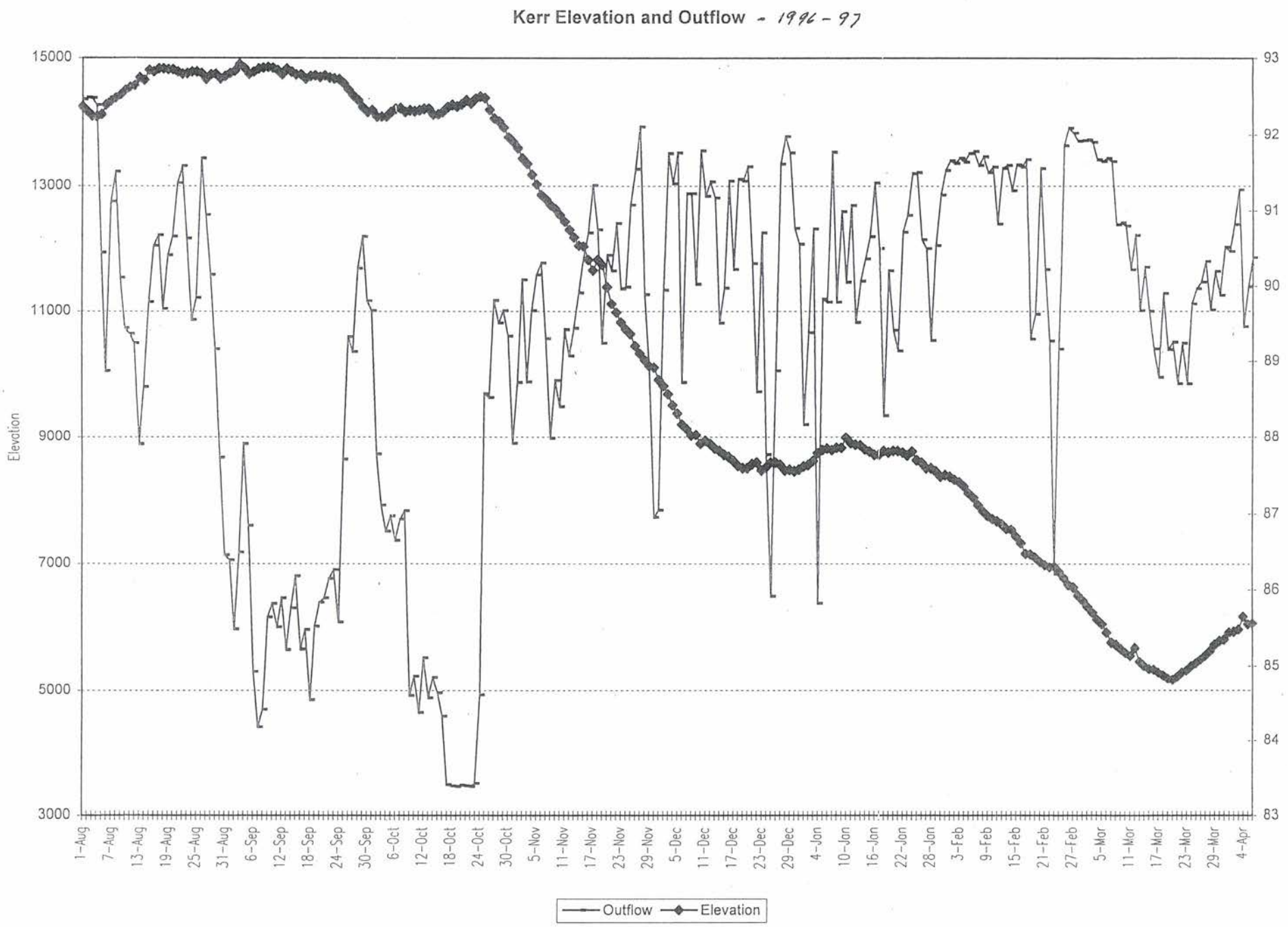
| Division | Total | Irrigable Acreage | |
|---|---|---|---|
| | | Non-Indian | Indian 1/ |
| Total | 116,359.36 | 91,980.50 | 24,378.86 |
| Camas | 11,219.22 | 11,030.16 | 189.06 |
| Jocko | 11,017.04 | 6,446.33 | 4,570.71 |
| Mission Valley | 94,123.10 | 74,504.01 | 19,619.09 |
| Mission South of Post Creek | 19,897.02 | 13,044.69 | 6,852.33 |
| Mission North of Post Creek | 74,226.08 | 61,459.32 | 12,766.76 |
| Post | 24,744.92 | 20,380.69 | 4,364.23 |
| Moiese | 5,863.21 | 5,389.36 | 473.85 |
| Pablo | 19,309.33 | 14,772.45 | 4,536.88 |
| Round Butte | 13,636.35 | 12,176.40 | 1,459.95 |
| Valley View | 8,286.95 | 6,868.10 | 1,418.85 |
| Polson | 2,385.32 | 1,872.32 | 513.00 |

1/ Government-owned land included with Indian.

# FLATHEAD LAKE

## PROJECTED DRAWDOWN AND F




Kerr Elevation and Outflow - 1996 - 97
Elevation
15000
13000
11000
9000
7000
5000
3000
93
92
91
90
89
88
87
86
85
84
83
1-Aug
7-Aug
13-Aug
19-Aug
25-Aug
31-Aug
6-Sep
12-Sep
18-Sep
24-Sep
30-Sep
6-Oct
12-Oct
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5-Nov
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29-Dec
4-Jan
10-Jan
16-Jan
22-Jan
28-Jan
3-Feb
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5-Mar
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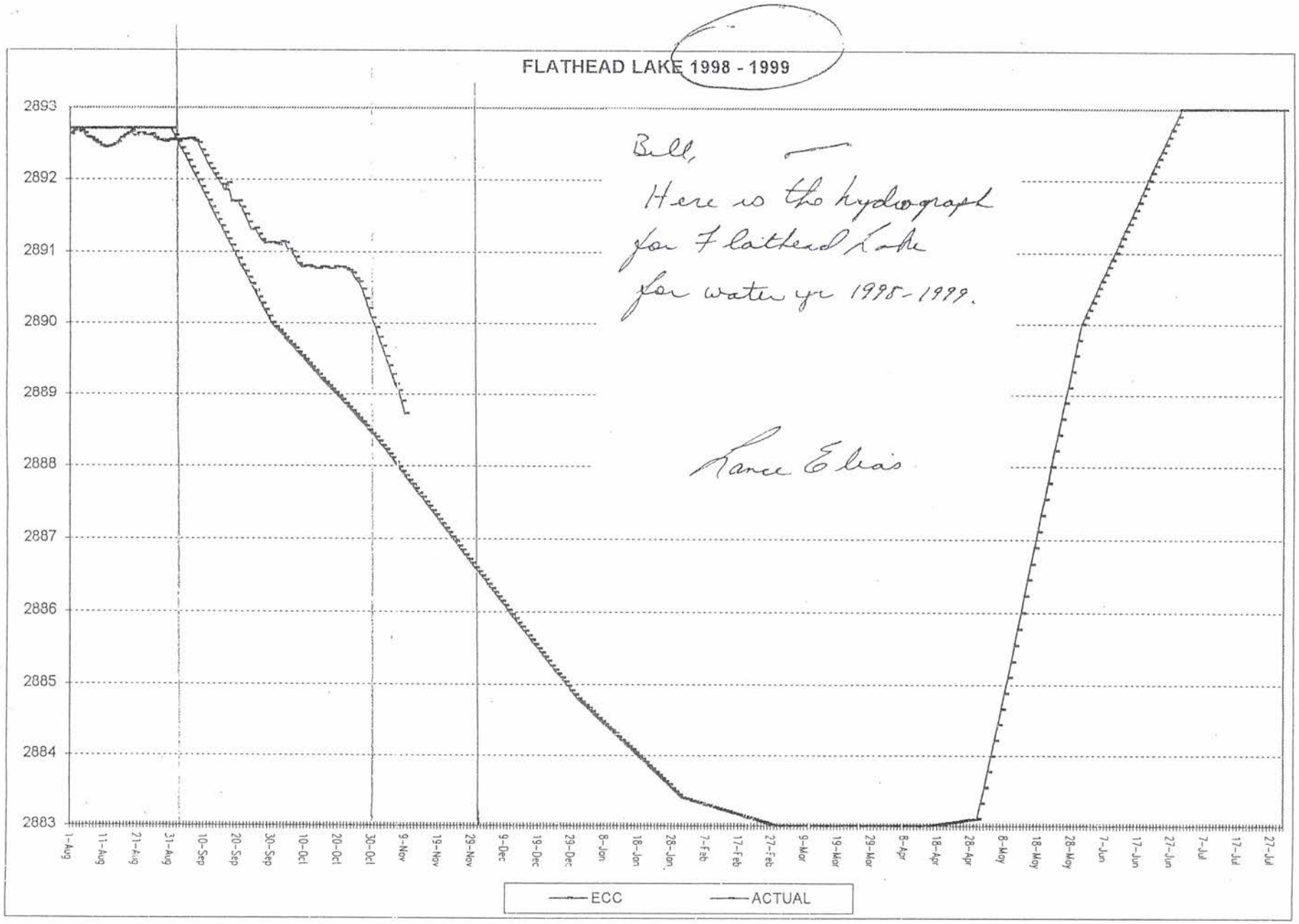
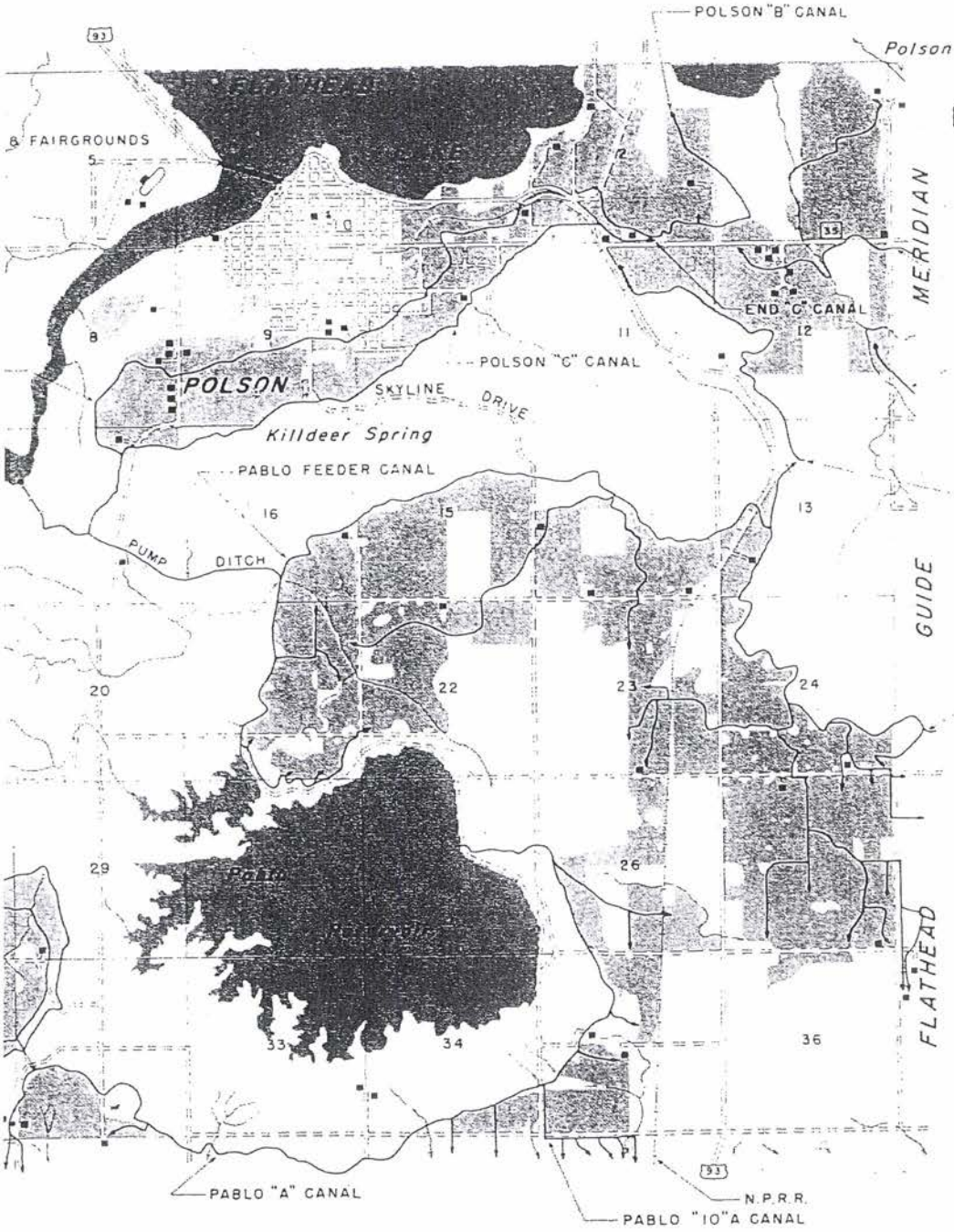
23-Mar
29-Mar
4-Apr
Outflow
Elevation


FLATHEAD LAKE 1998 - 1999
2893
2892
2891
2890
2889
2888
2887
2886
2885
2884
2883
1-Aug
11-Aug
21-Aug
31-Aug
10-Sep
20-Sep
30-Sep
10-Oct
20-Oct
30-Oct
9-Nov
19-Nov
29-Nov
9-Dec
19-Dec
29-Dec
8-Jan
18-Jan
28-Jan
7-Feb
17-Feb
27-Feb
9-Mar
19-Mar
29-Mar
8-Apr
18-Apr
28-Apr
8-May
18-May
28-May
7-Jun
17-Jun
27-Jun
7-Jul
17-Jul
27-Jul
ECC
ACTUAL
Bill,
Here is the hydrograph
for Flathead Lake
for water yr 1998-1999.
Lance Ellis




LEGEND

Flathead Irrigation District

Twp. 22 North

Rge. 20 West

19

## WATER STORAGE IN FLATHEAD LAKE

| ELEVATION | SEC. FT. DAYS. | A. FEET. |
|---|---|---|
| 2883.0 | ~~22840~~ xxxxxxx | xxxxxxx |
| 83.5 | 29850 | 59103 |
| 84.0 | 58700 | 118206 |
| 84.5 | 89800 | 177804 |
| 85.0 | 119900 | 237402 |
| 85.5 | 150200 | 297396 |
| 86.0 | 180500 | 357390 |
| 86.5 | 200000 | 417780 |
| 87.0 | 241500 | 478170 |
| 87.5 | 272150 | 538857 |
| 88.0 | 302800 | 599544 |
| 88.5 | 333600 | 660508 |
| 89.0 | 364400 | 721512 |
| 89.5 | 395350 | 782793 |
| 90.0 | 426300 | 844074 |
| 90.5 | 457450 | 905757 |
| 91.0 | 488600 | 967428 |
| 91.5 | 520000 | 1029600 |
| 92.0 | 551400 | 1091772 |
| 92.5 | 583050 | 1154459 |
| 2893.0 | 614700 | 1217106 |

WATER FLOW FORMULA

1 sec. ft. day --1.983 A. ft.

Sec. ft. days x 1.983 -- A. feet.

Lb. per. sq. in. --.434 x head in feet.

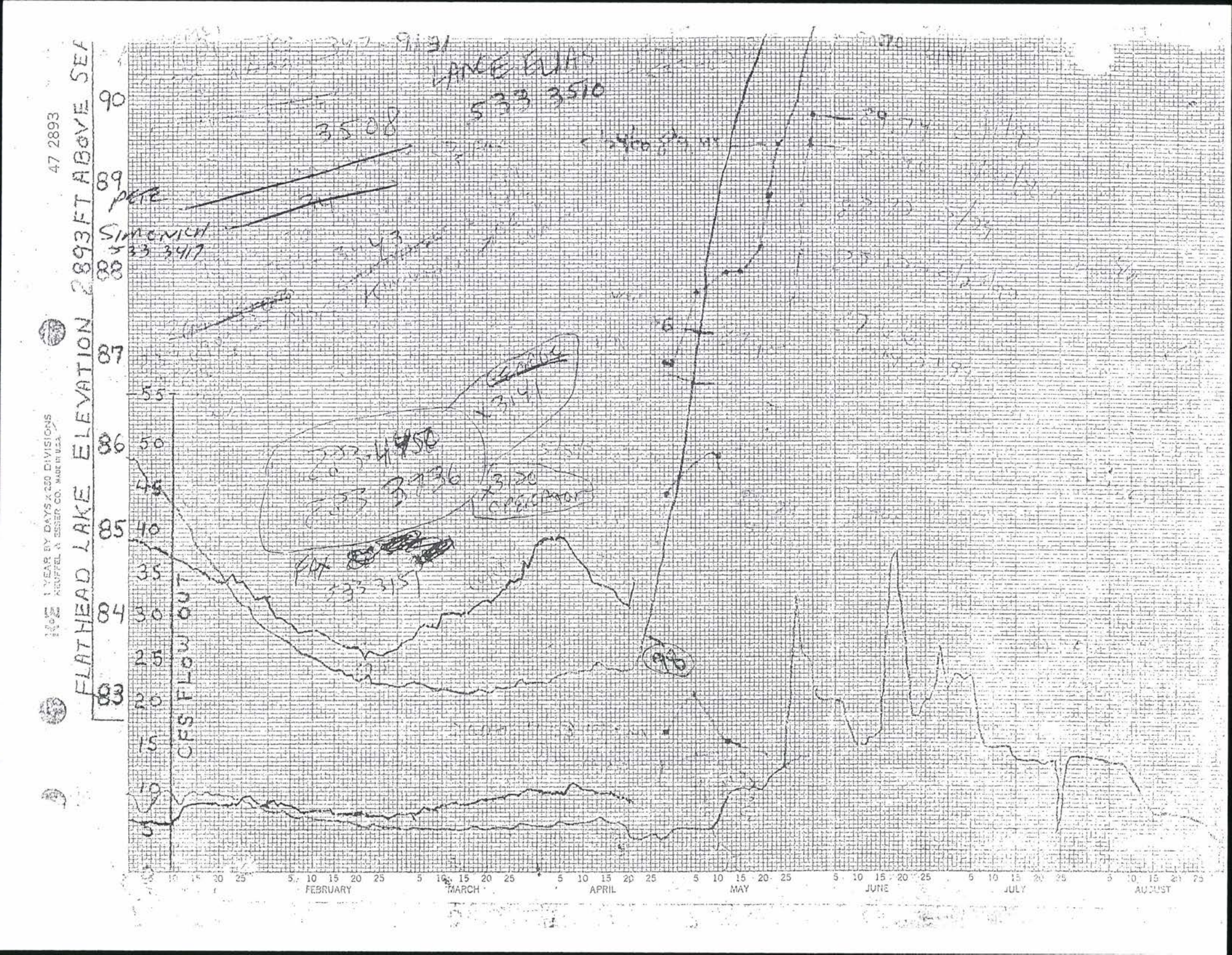
Head in feet -- 2.31 x Lb. psi.

## FLATHEAD LAKE

Capacity of natural outlet,

1932 records compiled by Geo. Ellis

| | |
|---|---|
| 2880.9 | 1000 |
| 2881.9 | 2400 |
| 82.4 | 3500 |
| 82.9 | 4800 |
| 83.4 | 6200 |
| 83.9 | 7800 |
| 84.4 | 9500 |
| 84.9 | 11500 |
| 85.9 | 15500 |
| 86.9 | 20000 |
| 87.9 | 25000 |
| 88.9 | 31000 |
| 89.9 | 37000 |
| 90.9 | 44000 |
| 91.9 | 50000 |
| 92.9 | 57000 |
| 93.9 | 65000 |
| 94.9 | 74000 |
| 95.9 | 81000 |


FLATHEAD LAKE ELEVATION 2893 FT ABOVE SEA
47 2893
1 YEAR BY DAYS X 250 DIVISIONS
KEUFFEL & ESSER CO. MADE IN U.S.A.
90
89
88
87
86
85
84
83
55
50
45
40
35
30
25
20
15
10
5
CFS FLOW OUT
FEBRUARY
MARCH
APRIL
MAY
JUNE
JULY
AUGUST
LANCE LUM
5 33 3510
3508
PETE
SIMONICH
33 3417
X 3141
2333 4450
2333 3136
X 3120
CREEK POOR
FLAT
2333 3157

Daily ... Lake ... from ... log sheet

96

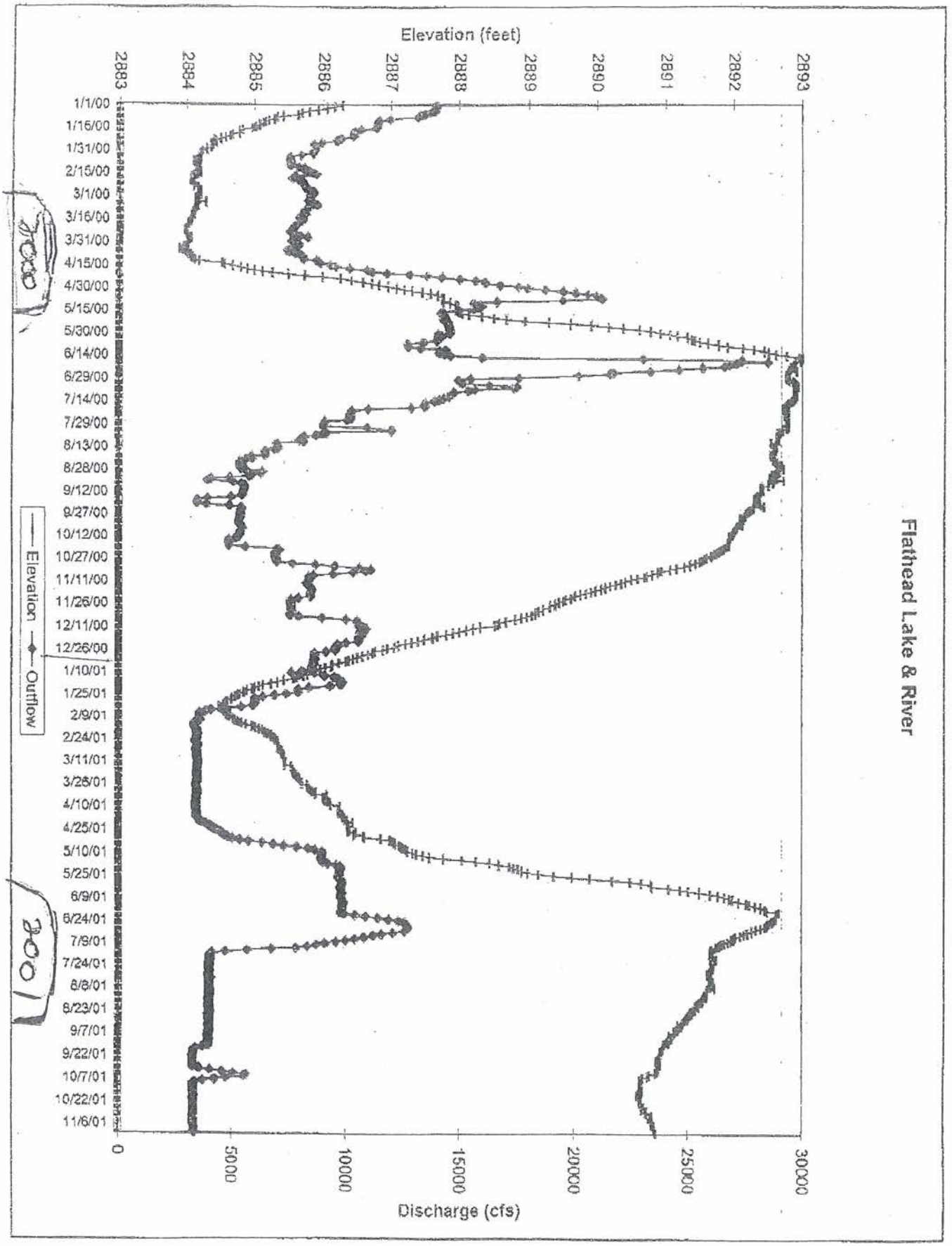
97

2800-00

| Date | Elev | In | Out |
|---|---|---|---|
| Jan 1 | 87.62 | 11652 | 9200 |
| 2 | 87.64 | 11886 | 10660 |
| 3 | .69 | 15375 | 12310 |
| 4 | .79 | 12520 | 6390 |
| 5 | .83 | 13650 | 11200 |
| 6 | .85 | 12376 | 11150 |
| 7 | .83 | 12304 | 13530 |
| 8 | .86 | 12990 | 11150 |
| 9 | .86 | 12590 | 12590 |
| 10 | .99 | 19430 | 11460 |
| 11 | .92 | 8400 | 12690 |
| 12 | .90 | 9590 | 11820 |
| 13 | .89 | 10870 | 11480 |
| 14 | .84 | 8760 | 11830 |
| 15 | .81 | 10350 | 12190 |
| 16 | .77 | 10600 | 13050 |
| 17 | .77 | 12000 | 12000 |
| 18 | .82 | 12405 | 9340 |
| 19 | .80 | 10414 | 11640 |
| 20 | .82 | 11926 | 10990 |
| 21 | .82 | 10370 | 10370 |
| 22 | .80 | 11034 | 12260 |
| 23 | .76 | 10078 | 12530 |
| 24 | .81 | 16265 | 13200 |
| 25 | .70 | 6477 | 13220 |
| 26 | .67 | 10300 | 12140 |
| 27 | .60 | 7709 | 12000 |
| 28 | .60 | 10540 | 10540 |
| 29 | .56 | 9600 | 12050 |
| 30 | .52 | 8570 | 12860 |
| 31 | .51 | 14480 | 13250 |
| Feb 1 | .49 | 12170 | 13400 |
| 2 | .45 | 10910 | 13360 |
| 3 | .42 | 11600 | 13440 |
| 4 | .36 | 9700 | 13380 |
| 5 | .27 | 7993 | 13510 |
| 6 | .21 | 9862 | 13540 |
| 7 | .11 | 7200 | 13330 |
| 8 | .03 | 8556 | 13460 |
| 9 | 86.97 | 9551 | 13220 |
| 10 | .93 | 10860 | 13300 |
| 11 | .90 | 10560 | 12390 |
| 12 | .86 | 10840 | 13280 |

| Date | Elev | In | Out |
|---|---|---|---|
| Feb 13 | 86.80 | 9670 | 13300 |
| 14 | .79 | 12320 | 12930 |
| 15 | .70 | 7850 | 13340 |
| 16 | .61 | 7810 | 13300 |
| 17 | .47 | 4880 | 13420 |
| 18 | .46 | 9950 | 10560 |
| 19 | .42 | 8510 | 10950 |
| 20 | .36 | 9620 | 13280 |
| 21 | .33 | 9220 | 11660 |
| 22 | .29 | 8700 | 10530 |
| 23 | .30 | 7450 | 6840 |
| 24 | .23 | 6130 | 10400 |
| 25 | .15 | 8750 | 13630 |
| 26 | .06 | 8420 | 13910 |
| 27 | .03 | 12000 | 13830 |
| 28 | 85.93 | 7628 | 13700 |
| Mar 1 | .86 | 9468 | 13710 |
| 2 | .78 | 8872 | 13720 |
| 3 | .70 | 8832 | 13680 |
| 4 | .61 | 7966 | 13420 |
| 5 | .55 | 9754 | 13390 |
| 6 | .44 | 6774 | 13440 |
| 7 | .31 | 5512 | 13390 |
| 8 | .28 | 10562 | 12380 |
| 9 | .23 | 9380 | 12410 |
| 10 | .18 | 9330 | 12360 |
| 11 | .14 | 9240 | 11660 |
| 12 | .24 | 18270 | 12210 |
| 13 | .06 | 100 | 11010 |
| 14 | .00 | 8060 | 11700 |
| 15 | 84.96 | 8590 | 11000 |
| 16 | .95 | 9790 | 10400 |
| 17 | .91 | 7550 | 9950 |
| 18 | .87 | 8880 | 11290 |
| 19 | .83 | 7982 | 10390 |
| 20 | .81 | 9306 | 10510 |
| 21 | .85 | 12260 | 9850 |
| 22 | .91 | 14100 | 10490 |
| 23 | .94 | 11660 | 9850 |
| 24 | 85.00 | 14730 | 11120 |
| 25 | .04 | 13780 | 11360 |
| 26 | .09 | 14490 | 11460 |
| 27 | .14 | 14820 | 11790 |

... pick up ...


Flathead Lake & River
Elevation (feet)
2883
2884
2885
2886
2887
2888
2889
2890
2891
2892
2893
Discharge (cfs)
0
5000
10000
15000
20000
25000
30000
Elevation
Outflow
1/1/00
1/16/00
1/31/00
2/15/00
3/1/00
3/16/00
3/31/00
4/15/00
4/30/00
5/15/00
5/30/00
6/14/00
6/29/00
7/14/00
7/29/00
8/13/00
8/28/00
9/12/00
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8/23/01
9/7/01
9/22/01
10/7/01
10/22/01
11/6/01

NW TECH. MANAGEMENT TEAM

TONY NORRISH
RECLAMATION
503 872 - [redacted]
2802

Summer flow ord. end of Sep.

RIVER CONTROL PORTLAND → CORPS OF ENGIN. 18 DAYS
CATHY LEEBACHUCK 503 808-3942
LEEBECHUK

503 222 9480 Jones Fitzfield works for State MT
CONSULTANT

BPA DROVE ↓ Flow

BRIAN MAROTZ ST FWD FISHERIES BIOLOGIST — FILLED THE GAP 4708 ALL SUMMER

NEED TO PROTECT RIVER

3500

BILLIE MEASURE (H) 756-3437 (O) 752 6373/755 7975

NW PLANNING & PROGRAMMING COUNCIL [redacted] x1 406 452 3952

[redacted] x2

STAFF KARI BERG x4

April 7, 2004 SERVING THE FLATHEAD SINCE 1988 ••• www.dailyinterlake.com

# More drought could hurt lak

By JIM MANN
The Daily Inter Lake

An early and rapid snowmelt, combined with a deep winter drawdown of Flathead Lake, have created a shaky outlook for maintaining the lake at full pool this summer.

When it comes to water in the Flathead Basin, there are deficits all around.

The Flathead basin's snowpack is at 79 percent of its 30-year average, and it is 9 percent behind last year's April 1 measurements, according to a recent report from the Natural Resources Conservation Service in Bozeman.

The snowpack declined 13 percent in March due to a lack of precipitation and an early snowmelt.

But that snowmelt has not translated to runoff that reaches the Flathead River, and Flathead Lake is nearly 10 feet below full pool.

"Right now, we're saying yes, we can refill," said Lance Elias, a resource coordinator with PPL Montana, the power company that operates Kerr Dam at the foot of Flathead Lake. "But to maintain the

## Lake ringed with docks, marinas that require a full pool

REFILL/From A1

the end of April, and then up to 12,700 cfs from mid-May through June.

Elias said if flows into the lake were to decline severely, that could make it difficult to maintain the lake at its full-pool elevation of 2,893 feet above sea level.

"Once we get the lake full, it's kind of a different situation that says can you keep it full," he said. "It depends on what the sustained inflows will be."

PPL Montana is required to have the lake at full pool by June 15 and maintain it at that elevation for the bulk of the summer.

Flathead Lake is ringed with fixed docks and marina facilities that require the lake to be at or near full pool. Lakefront property and business owners were outraged three years ago when the lake never reached full pool and the summer passed with many docks and shore stations well above the waterline.

The situation revealed a conflict between minimum flow requirements in the Flathead River below Kerr Dam and the full pool requirement, and it led to an effort to establish a drought management plan for Flathead Lake.

That effort, which is led by the U.S. Department of Interior, is still under way.

The Natural Resources Conservation Service has issued a streamflow forecast for April 1 through July 31 predicting a basinwide runoff of 67 percent to 75 percent of average.

But that forecast is based on "near normal" spring precipitation and runoff.

Roy Kaiser, water supply specialist with the Natural Resources Conservation Service, said that if April weather is similar to the relatively warm, dry days of March, the basinwide streamflow forecast could drop off "to somewhere around 54 percent of average."

And that would make it even more difficult to maintain Flathead Lake at full pool.

Kaiser said soils depleted of moisture after years of drought are definitely hindering stream runoff.

"Most of the snowmelt we've seen so far has not turned into runoff," he said. "It's going into the soil, because we have this long-running soil moisture deficit."

Kaiser noted that the Kraft Creek automated snow monitoring station at 4,750 feet in the Swan River basin has already "zeroed out" weeks before it normally does.

Elias conceded that refilling the lake and maintaining it at full pool could be difficult if extreme dry weather continues.

"We saw the month of March change very dramatically," he said. "Maybe it will rain 6 or 7 inches in April. But if it continues to be dry, I could say that it absolutely will not fill. It's a moving target."

Bill Myers, a Flathead Lake tour boat operator who closely monitors the lake and Kerr Dam operations, contends that PPL Montana drew the lake down too far over the winter.

"We've had five or six years of drought and the ground is very dry right now. The groundwater is down," he said. "I think it would have been prudent for them to leave more water on the lake."

Elias said "strong forecasts" for the basin's snowpack in January, February and March played a big part in dropping the lake level.

Based on those forecasts, he said, the U.S. Army Corps of Engineers wanted the lake lower for flood control purposes.

*Reporter Jim Mann may be reached at 758-4407 or by e-mail at jmann@dailyinterlake.com*

## e refill

refill is something different."

Starting in mid-April, Kerr Dam will release minimum flows that are required under the dam's license conditions. Outflows will ramp up from 3,200 to 5,000 cubic feet per second by

See REFILL on Page A3

NO

PPL DISCHARGE WAS STILL OVER 6,650 ON 3/30/04

THEN THEY REDUCED OUTFLOW BEGIN. 3/31/04

INTERLAKE 3/4/05

# Flathead snowpack hits a record low

By JIM MANN
The Daily Inter Lake

Driven by the driest February in 100 years, the Flathead River Basin now has a record low snowpack.

And there is no relief in sight, according to National Weather Service officials.

As of the end of February, snowpack measurements at more than a dozen sites above the Flathead Basin show snow levels at 51 percent of the 30-year average.

And those measurements averaged out are 2 inches below earlier record lows set at the end of February 2001.

The basin has the lowest

See SNOWPACK on Page A3

*'We're really kind of in uncharted territory considering the drought we've had for the last six years.'*

■ Roy Kaiser
Natural Resources Conservation Servi



## FROM PAGE ONE

# Snowpack at record low: 'We're in uncharted territory'

**SNOWPACK/From A1**

snow levels since reliable measurements started in 1961, according to Roy Kaiser, water supply specialist for the Natural Resources Conservation Service, the agency in charge of monitoring snowpack and streamflows.

The Kootenai River Basin, meanwhile, has a snowpack that's at 50 percent of the 30-year average, with average measurements that are barely above record lows set in 1977.

"When we talk about these record lows, we're really kind of in uncharted territory considering the drought we've had for the last six years," Kaiser said. "We've really not been here before in terms of the number of drought years strung together, and now we get record lows."

Kaiser said the cumulative effects could be profound in terms of streamflows and groundwater supplies.

Kaiser's streamflow forecasts, which assume there will be normal precipitation from March through June, project dismal flows for many Northwest Montana rivers.

Projected flows are 61-67 percent of average on the North Fork Flathead; 53-57 percent of normal on the Middle Fork Flathead; 30-35 percent of average on the Stillwater River near Whitefish; 42-47 percent of average on the Whitefish River near Kalispell; and 22-26 percent of average on Ashley Creek south of Kalispell.

The Ashley Creek forecast "really reflects the lack of snow at low elevations," Kaiser said.

National Weather Service officials said Thursday that most of Western Montana requires precipitation at 200 percent above average over the next three months to ensure normal streamflows.

Several automated snow measuring sites at middle or low elevations are recording record low measurements. The Kraft Creek station near Condon (at an elevation of 4,750 feet) has 4.2 inches of snow water content, well below the March 1 record low of 5.4 inches set in 1951.

A 3.9-inch measurement at Hand Creek, located near Star Meadows at 5,035 feet, is below the record low of 5.7 inches set in 1984.

In Glacier National Park, the Many Glacier site is recording 3.1 inches, far below a 1977 record low of 7.9 inches.

Despite the extremely dry conditions in Northwest Montana, it is not the driest part of the state.

That distinction goes to the Sun, Teton and Marias river basins, where snowpack is 42 percent of the 30-year average.

Peter Felsch, a meteorologist with the National Weather Service in Missoula, said immediate and long-term forecasts show no change in weather patterns that have left Montana dry with mostly blue skies over the last several weeks.

The Flathead Valley received just .03 inches of precipitation during February, compared to the previous record low of .06 inches in 1934. This February was the driest the Flathead has experienced since record keeping started more than 100 years ago.

A normal February has 1.15 inches of precipitation.

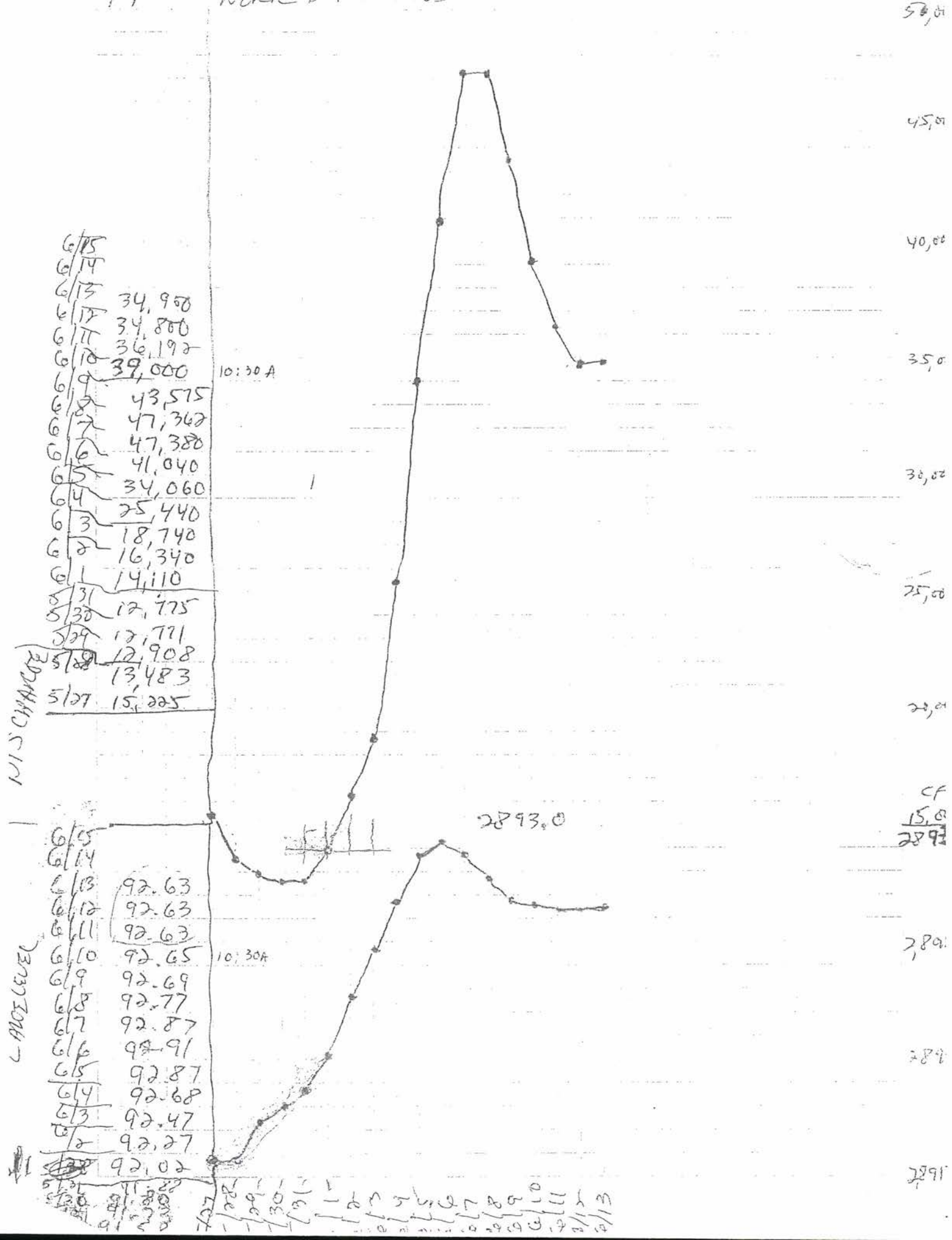
Since January, a high-pressure ridge has persisted over the region, with Pacific moisture going across the southwestern United States or northern British Columbia, driven by a split jet stream.

"The last real trough we had in the Northern Rockies was in early January," Felsch said. "This is really unprecedented t have a ridge pattern persist for two months.

"I would say that there is some hope, maybe by the middle of the month, maybe after, that we would see some change in the weather we have right now," he said.

*Reporter Jim Mann may be reached at 758-4407 or by e-mail at jmann@dailyinterlake.com*

PPL: KERR DAM 2005



| | 2007 CFS | 2007 Elev. | 2008 CFS | 2008 Elev. |
|---|---|---|---|---|
| 1-Jan | 9782 | 89.32 | 11500 | 87.82 |
| 2-Jan | 9781 | 89.25 | 11160 | 87.7 |
| 3-Jan | 9782 | 89.18 | 11200 | 87.6 |
| 4-Jan | 9783 | 89.07 | 10590 | 87.49 |
| 5-Jan | 9779 | 88.99 | 10200 | 87.4 |
| 6-Jan | 9782 | 88.81 | 10160 | 87.32 |
| 7-Jan | 9769 | 88.83 | 10260 | 87.23 |
| 8-Jan | 9770 | 88.77 | 9529 | 87.16 |
| 9-Jan | 9760 | 88.71 | 9250 | 87.12 |
| 10-Jan | 9780 | 88.53 | 9201 | 87.02 |
| 11-Jan | 9760 | 88.67 | 8595 | 86.92 |
| 12-Jan | 9750 | 88.48 | 8248 | 86.89 |
| 13-Jan | 9750 | 88.4 | 7994 | 86.83 |
| 14-Jan | 9750 | 88.36 | 7834 | 86.78 |
| 15-Jan | 9750 | 88.2 | 7796 | 86.74 |
| 16-Jan | 9750 | 88.13 | 7811 | 86.68 |
| 17-Jan | 9750 | 88.05 | 7742 | 86.61 |
| 18-Jan | 9748 | 87.97 | 7828 | 86.65 |
| 19-Jan | 9749 | 87.91 | 7790 | 86.56 |
| 20-Jan | 9751 | 87.88 | 7798 | 86.63 |
| 21-Jan | 9750 | 87.76 | 7825 | 86.5 |
| 22-Jan | 9751 | 87.67 | 7900 | 86.4 |
| 23-Jan | 9750 | 87.65 | 7880 | 86.34 |
| 24-Jan | 9780 | 87.6 | 7960 | 86.3 |
| 25-Jan | 9778 | 87.52 | 7980 | 86.23 |
| 26-Jan | 9780 | 87.42 | 8000 | 86.18 |
| 27-Jan | 9780 | 87.37 | 8000 | 86.06 |
| 28-Jan | 9780 | 87.3 | 7940 | 86.16 |
| 29-Jan | 9780 | 87.2 | 7961 | 86.06 |
| 30-Jan | 9780 | 87.16 | 7975 | 85.99 |
| 31-Jan | 9780 | 87.02 | 8023 | 85.86 |
| 1-Feb | 9750 | 87 | 8150 | 85.88 |
| 2-Feb | 9750 | 86.89 | 8090 | 85.79 |
| 3-Feb | 9740 | 86.81 | 8060 | 85.78 |
| 4-Feb | 9740 | 86.73 | 8073 | 85.71 |
| 5-Feb | 9730 | 86.65 | 7945 | 85.64 |
| 6-Feb | 9726 | 86.6 | 7932 | 85.55 |
| 7-Feb | 9730 | 86.51 | 7933 | 85.51 |
| 8-Feb | 9100 | 86.46 | 7775 | 85.44 |
| 9-Feb | 8720 | 86.4 | 7746 | 85.44 |
| 10-Feb | 8760 | 86.34 | 7655 | 85.39 |
| 11-Feb | 8730 | 86.31 | 7784 | 85.34 |
| 12-Feb | 8799 | 86.32 | 7790 | 85.3 |
| 13-Feb | 8800 | 86.21 | 7920 | 85.23 |
| 14-Feb | 8800 | 86.15 | 8010 | 85.23 |
| 15-Feb | 8850 | 86.07 | 8060 | 85.17 |
| 16-Feb | 8858 | 85.99 | 8080 | 85.13 |
| 17-Feb | 8901 | 85.96 | 8100 | 85.1 |
| 18-Feb | 8933 | 85.84 | 8060 | 85.05 |

| | | | | |
|---|---|---|---|---|
| 19-Feb | 9015 | 85.79 | 8073 | 85 |
| 20-Feb | 9540 | 85.69 | 8078 | 84.94 |
| 21-Feb | 10550 | 85.7 | 8513 | 84.86 |
| 22-Feb | 10250 | 85.63 | 9323 | 84.73 |
| 23-Feb | 9830 | 85.55 | 9540 | 84.7 |
| 24-Feb | 9780 | 85.45 | 9632 | 84.65 |
| 25-Feb | 9780 | 85.42 | 9630 | 84.54 |
| 26-Feb | 9780 | 85.3 | 9570 | 84.46 |
| 27-Feb | 9780 | 85.26 | 9544 | 84.38 |
| 28-Feb | 9771 | 85.1 | 9492 | 84.34 |
| 1-Mar | 9708 | 85.04 | 8978 | 84.18 |
| 2-Mar | 9680 | 84.99 | 8521 | 84.08 |
| 3-Mar | 9680 | 84.91 | 8065 | 84.05 |
| 4-Mar | 9680 | 84.82 | 8070 | 84.02 |
| 5-Mar | 9680 | 84.75 | 8290 | 83.96 |
| 6-Mar | 9676 | 84.67 | 8300 | 83.93 |
| 7-Mar | 9660 | 84.61 | 8170 | 83.88 |
| 8-Mar | 9630 | 84.41 | 7830 | 83.82 |
| 9-Mar | 9620 | 84.45 | 7570 | 83.79 |
| 10-Mar | 8980 | 84.36 | 7410 | 83.75 |
| 11-Mar | 8740 | 84.31 | 7186 | 83.59 |
| 12-Mar | 8640 | 84.23 | 6917 | 83.7 |
| 13-Mar | 8610 | 84.2 | 7032 | 83.6 |
| 14-Mar | 9220 | 84.28 | 6472 | 83.59 |
| 15-Mar | 9550 | 84.35 | 6881 | 83.56 |
| 16-Mar | 9550 | 84.37 | 6753 | 83.53 |
| 17-Mar | 9570 | 84.4 | 6493 | 83.52 |
| 18-Mar | 9580 | 84.34 | 6390 | 83.47 |
| 19-Mar | 9590 | 84.42 | 6410 | 83.47 |
| 20-Mar | 9592 | 84.42 | 6430 | 83.45 |
| 21-Mar | 9612 | 84.54 | 6450 | 83.42 |
| 22-Mar | 9661 | 84.66 | 6440 | 83.41 |
| 23-Mar | 9311 | 84.77 | 6440 | 83.36 |
| 24-Mar | 9716 | 84.83 | 6240 | 83.34 |
| 25-Mar | 9789 | 84.85 | 5920 | 83.32 |
| 26-Mar | 9701 | 85.02 | 5920 | 83.31 |
| 27-Mar | 9504 | 85.29 | 5980 | 83.28 |
| 28-Mar | 11208 | 85.48 | 5990 | 83.27 |
| 29-Mar | 14262 | 85.62 | 5920 | 83.27 |
| 30-Mar | 14892 | 85.71 | 6010 | 83.28 |
| 31-Mar | 14700 | 85.68 | 5995 | 83.22 |
| 1-Apr | 14904 | 85.77 | 5817 | 83.21 |
| 2-Apr | 15358 | 85.79 | 5700 | 83.22 |
| 3-Apr | 15240 | 85.81 | 5645 | 83.21 |
| 4-Apr | 15600 | 85.9 | 5713 | 83.15 |
| 5-Apr | 15600 | 85.87 | 5665 | 83.18 |
| 6-Apr | 15600 | 85.86 | 5387 | 83.17 |
| 7-Apr | 15440 | 85.85 | 5249 | 83.12 |
| 8-Apr | 15400 | 85.8 | 5640 | 83.14 |
| 9-Apr | 15090 | 85.77 | 5890 | 83.11 |
| 10-Apr | 14842 | 85.69 | 5720 | 83.14 |

| | | | | |
|---|---|---|---|---|
| 11-Apr | 15196 | 85.74 | 5500 | 83.15 |
| 12-Apr | 15233 | 85.79 | 5410 | 83.18 |
| 13-Apr | 14988 | 85.73 | 5660 | 83.2 |
| 14-Apr | 14783 | 85.72 | 5970 | 83.22 |
| 15-Apr | 14708 | 85.68 | 5940 | 83.24 |
| 16-Apr | 14808 | 85.66 | 5860 | 83.29 |
| 17-Apr | 14721 | 85.66 | 6110 | 83.37 |
| 18-Apr | 14700 | 85.62 | 6370 | 83.48 |
| 19-Apr | 14612 | 85.61 | 6690 | 83.58 |
| 20-Apr | 14629 | 85.62 | 6890 | 83.53 |
| 21-Apr | 14604 | 85.65 | 6670 | 83.56 |
| 22-Apr | 14562 | 85.6 | 6686 | 83.61 |
| 23-Apr | 14462 | 85.58 | 6920 | 83.68 |
| 24-Apr | 14230 | 85.56 | 7026 | 83.62 |
| 25-Apr | 14090 | 85.53 | 7108 | 83.66 |
| 26-Apr | 14120 | 85.51 | 7106 | 83.66 |
| 27-Apr | 14240 | 85.54 | 7110 | 83.66 |
| 28-Apr | 14360 | 85.58 | 7420 | 83.78 |
| 29-Apr | 14600 | 85.62 | 7850 | 83.84 |
| 30-Apr | 15108 | 85.7 | 8040 | 83.85 |
| 1-May | 15400 | 85.81 | 8010 | 83.99 |
| 2-May | 15538 | 85.93 | 8020 | 84.07 |
| 3-May | 15654 | 86.19 | 8310 | 84.14 |
| 4-May | 15012 | 86.42 | 8970 | 84.21 |
| 5-May | 15300 | 86.73 | 9450 | 84.31 |
| 6-May | 15108 | 86.95 | 9630 | 84.47 |
| 7-May | 15258 | 87.13 | 10030 | 84.58 |
| 8-May | 15212 | 87.31 | 10820 | 84.82 |
| 9-May | 14867 | 87.43 | 11710 | 85.03 |
| 10-May | 15233 | 87.65 | 12530 | 85.19 |
| 11-May | 15275 | 88 | 12750 | 85.32 |
| 12-May | 15275 | 88.3 | 13350 | 85.47 |
| 13-May | 15158 | 88.71 | 14133 | 85.6 |
| 14-May | 16396 | 89 | 14579 | 85.72 |
| 15-May | 18740 | 89.36 | 15192 | 85.82 |
| 16-May | 21430 | 89.56 | 15433 | 85.95 |
| 17-May | 23590 | 89.7 | 15600 | 86.14 |
| 18-May | 25150 | 89.83 | 15729 | 86.44 |
| 19-May | 25180 | 89.98 | 15596 | 87.02 |
| 20-May | 25100 | 90.15 | 16942 | 87.79 |
| 21-May | 25020 | 90.31 | 19983 | 88.43 |
| 22-May | 25129 | 90.45 | 19983 | 88.43 |
| 23-May | 24400 | 90.51 | 22858 | 89 |
| 24-May | 20346 | 90.58 | 25875 | 89.38 |
| 25-May | 15942 | 90.76 | 32896 | 90.03 |
| 26-May | 14808 | 90.85 | 35325 | 90.28 |
| 27-May | 14496 | 90.99 | 37450 | 90.48 |
| 28-May | 14512 | 91.09 | 38880 | 90.59 |
| 29-May | 14579 | 91.27 | 38870 | 90.64 |
| 30-May | 14475 | 91.45 | 39260 | 90.72 |
| 31-May | 14483 | 91.6 | 39550 | 90.78 |

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| 1-Jun | 14362 | 91.76 | 39900 | 90.91 |
| 2-Jun | 16779 | 91.92 | 40530 | 90.97 |
| 3-Jun | 19183 | 92.12 | 38682 | 91.03 |
| 4-Jun | 20150 | 92.2 | 37890 | 91.16 |
| 5-Jun | 24780 | 92.45 | 36089 | 91.2 |
| 6-Jun | 30100 | 92.55 | 31850 | 91.18 |
| 7-Jun | 32480 | 92.59 | 28800 | 91.42 |
| 8-Jun | 30040 | 92.56 | 29288 | 91.59 |
| 9-Jun | 24630 | 92.59 | 32504 | 91.63 |
| 10-Jun | 21500 | 92.62 | 35041 | 91.66 |
| 11-Jun | 21630 | 92.65 | 38962 | 91.66 |
| 12-Jun | 21625 | 92.68 | 37550 | 91.55 |
| 13-Jun | 20946 | 92.72 | 38200 | 91.48 |
| 14-Jun | 18758 | 92.71 | 39340 | 91.45 |
| 15-Jun | 15438 | 92.79 | 39400 | 91.47 |
| 16-Jun | 14604 | 92.86 | 37250 | 91.51 |
| 17-Jun | 14575 | 92.85 | 33990 | 91.58 |
| 18-Jun | 16038 | 92.9 | 30580 | 91.68 |
| 19-Jun | 18221 | 92.94 | 27750 | 91.86 |
| 20-Jun | 20446 | 92.96 | 30330 | 91.99 |
| 21-Jun | 20025 | 92.92 | 33940 | 92.02 |
| 22-Jun | 19254 | 92.89 | 35280 | 92.01 |
| 23-Jun | 18929 | 92.85 | 37670 | 92.03 |
| 24-Jun | 17979 | 92.85 | 37708 | 92.05 |
| 25-Jun | 17708 | 92.86 | 36638 | 92.04 |
| 26-Jun | 15090 | 92.81 | 36000 | 92.06 |
| 27-Jun | 14160 | 92.96 | 32167 | 92.08 |
| 28-Jun | 13890 | 92.86 | 27783 | 92.21 |
| 29-Jun | 13810 | 92.88 | 23467 | 92.39 |
| 30-Jun | 13840 | 92.83 | 22000 | 92.6 |
| 1-Jul | 13980 | 92.89 | 24517 | 92.92 |
| 2-Jul | 13920 | 92.86 | 33146 | 92.94 |
| 3-Jul | 13600 | 92.82 | 41800 | 92.86 |
| 4-Jul | 13317 | 92.82 | 38150 | 92.83 |
| 5-Jul | 13158 | 92.83 | 34470 | 92.85 |
| 6-Jul | 12729 | 92.8 | 32930 | 92.86 |
| 7-Jul | 11879 | 92.78 | 32330 | 92.8 |
| 8-Jul | 11167 | 92.77 | 28350 | 92.76 |
| 9-Jul | 10971 | 92.77 | 23090 | 92.77 |
| 10-Jul | 10925 | 92.77 | 19990 | 92.78 |
| 11-Jul | 10954 | 92.81 | 19010 | 92.79 |
| 12-Jul | 11012 | 92.79 | 18470 | 92.83 |
| 13-Jul | 10692 | 92.79 | 17700 | 92.82 |
| 14-Jul | 10419 | 92.78 | 15650 | 92.85 |
| 15-Jul | 10193 | 92.75 | 18540 | 92.86 |
| 16-Jul | 9370 | 92.73 | 15962 | 92.9 |
| 17-Jul | 8850 | 92.76 | 16579 | 92.9 |
| 18-Jul | 8550 | 92.85 | 16654 | 92.89 |
| 19-Jul | 9110 | 92.9 | 16200 | 92.85 |
| 20-Jul | 9310 | 92.86 | 15080 | 92.88 |
| 21-Jul | 9410 | 92.86 | 14520 | 92.84 |

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| 22-Jul | 9420 | 92.85 | 14430 | 92.85 |
| 23-Jul | 9370 | 92.84 | 14380 | 92.88 |
| 24-Jul | 9337 | 92.8 | 14421 | 92.89 |
| 25-Jul | 9235 | 92.8 | 14312 | 92.88 |
| 26-Jul | 9229 | 92.79 | 14242 | 92.84 |
| 27-Jul | 9135 | 92.76 | 14200 | 92.82 |
| 28-Jul | 8188 | 92.76 | 13980 | 92.78 |
| 29-Jul | 8112 | 92.76 | 13480 | 92.78 |
| 30-Jul | 8197 | 92.72 | 12920 | 92.72 |
| 31-Jul | 7692 | 92.69 | 12340 | 92.71 |
| 1-Aug | 6878 | 92.73 | 11630 | 92.7 |
| 2-Aug | 6687 | 92.71 | 10570 | 92.7 |
| 3-Aug | 6639 | 92.68 | 10260 | 92.75 |
| 4-Aug | 6135 | 92.66 | 10180 | 92.76 |
| 5-Aug | 5802 | 92.72 | 9980 | 92.81 |
| 6-Aug | 5760 | 92.68 | 9031 | 92.8 |
| 7-Aug | 5810 | 92.66 | 9813 | 92.82 |
| 8-Aug | 5810 | 92.66 | 8489 | 92.84 |
| 9-Aug | 5810 | 92.68 | 8573 | 92.88 |
| 10-Aug | 5830 | 92.69 | 8882 | 92.92 |
| 11-Aug | 5840 | 92.73 | 9220 | 92.9 |
| 12-Aug | 5840 | 92.72 | 9193 | 92.92 |
| 13-Aug | 5820 | 92.7 | 9294 | 92.93 |
| 14-Aug | 5802 | 92.75 | 10017 | 92.96 |
| 15-Aug | 5762 | 92.73 | 10662 | 92.91 |
| 16-Aug | 5742 | 92.71 | 10788 | 92.89 |
| 17-Aug | 5742 | 92.74 | 10660 | 92.88 |
| 18-Aug | 5825 | 92.75 | 10600 | 92.86 |
| 19-Aug | 5813 | 92.7 | 10370 | 92.83 |
| 20-Aug | 5835 | 92.66 | 9980 | 92.84 |
| 21-Aug | 5859 | 92.65 | 9810 | 92.82 |
| 22-Aug | 5891 | 92.69 | 9690 | 92.87 |
| 23-Aug | 5892 | 92.71 | 9650 | 92.86 |
| 24-Aug | 5908 | 92.7 | 9690 | 92.84 |
| 25-Aug | 5918 | 92.68 | 9730 | 92.84 |
| 26-Aug | 5894 | 92.63 | 9700 | 92.81 |
| 27-Aug | 5895 | 92.65 | 9710 | 92.8 |
| 28-Aug | 5780 | 92.72 | 9796 | 92.81 |
| 29-Aug | 6020 | 92.67 | 9769 | 92.82 |
| 30-Aug | 6000 | 92.67 | 9739 | 92.83 |
| 31-Aug | 6010 | 92.64 | 9741 | 92.86 |
| 1-Sep | 5980 | 92.65 | 9180 | 92.82 |
| 2-Sep | 6000 | 92.66 | 8860 | 92.79 |
| 3-Sep | 6020 | 92.66 | 8880 | 92.8 |
| 4-Sep | 6185 | 92.64 | 8910 | 92.75 |
| 5-Sep | 6335 | 92.59 | 8910 | 92.7 |
| 6-Sep | 6335 | 92.53 | 8930 | 92.69 |
| 7-Sep | 6212 | 92.49 | 8900 | 92.64 |
| 8-Sep | 6145 | 92.47 | 8860 | 92.6 |
| 9-Sep | 6150 | 92.42 | 8300 | 92.58 |
| 10-Sep | 6093 | 92.37 | 7480 | 92.57 |

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| 11-Sep | 6087 | 92.35 | 6890 | 92.55 |
| 12-Sep | 6078 | 92.31 | 6730 | 92.58 |
| 13-Sep | 6101 | 92.27 | 6680 | 92.56 |
| 14-Sep | 6129 | 92.26 | 6670 | 92.54 |
| 15-Sep | 6135 | 92.19 | 6720 | 92.53 |
| 16-Sep | 6138 | 92.15 | 6786 | 92.53 |
| 17-Sep | 6139 | 92.08 | 6789 | 92.52 |
| 18-Sep | 6180 | 92.02 | 6845 | 92.5 |
| 19-Sep | 6200 | 92 | 7344 | 92.49 |
| 20-Sep | 6270 | 91.99 | 7596 | 92.46 |
| 21-Sep | 6300 | 91.93 | 7605 | 92.44 |
| 22-Sep | 6280 | 91.88 | 7571 | 92.42 |
| 23-Sep | 6320 | 91.9 | 7520 | 92.42 |
| 24-Sep | 6650 | 91.88 | 7200 | 92.39 |
| 25-Sep | 7272 | 91.8 | 7700 | 92.4 |
| 26-Sep | 7585 | 91.76 | 8040 | 92.42 |
| 27-Sep | 7576 | 91.73 | 8700 | 92.39 |
| 28-Sep | 7682 | 91.69 | 8050 | 92.35 |
| 29-Sep | 7671 | 91.6 | 7590 | 92.32 |
| 30-Sep | 7619 | 91.56 | 7560 | 92.29 |
| 1-Oct | 7589 | 91.55 | 7560 | 92.26 |
| 2-Oct | 7560 | 91.38 | 7660 | 92.21 |
| 3-Oct | 7577 | 91.34 | 7740 | 92.17 |
| 4-Oct | 7659 | 91.36 | 7780 | 92.12 |
| 5-Oct | 7510 | 91.34 | 7700 | 92.08 |
| 6-Oct | 6787 | 91.25 | 7730 | 92.05 |
| 7-Oct | 6417 | 91.18 | 7741 | 91.92 |
| 8-Oct | 5608 | 91.16 | 7610 | 91.96 |
| 9-Oct | 4810 | 91.19 | 7638 | 92 |
| 10-Oct | 4620 | 91.17 | 7617 | 91.92 |
| 11-Oct | 4620 | 91.13 | 7628 | 91.88 |
| 12-Oct | 4660 | 91.16 | 7621 | 91.76 |
| 13-Oct | 4650 | 91.18 | 7655 | 91.66 |
| 14-Oct | 4670 | 91.17 | 7604 | 91.62 |
| 15-Oct | 4660 | 91.16 | 7646 | 91.61 |
| 16-Oct | 4673 | 91.15 | 7810 | 91.57 |
| 17-Oct | 4668 | 91.12 | 7810 | 91.52 |
| 18-Oct | 4677 | 91.14 | 7820 | 91.46 |
| 19-Oct | 4658 | 91.14 | 7800 | 91.45 |
| 20-Oct | 4652 | 91.13 | 7680 | 91.37 |
| 21-Oct | 4718 | 91.12 | 7620 | 91.35 |
| 22-Oct | 4705 | 91.12 | 7640 | 91.32 |
| 23-Oct | 4730 | 91.09 | 7570 | 91.3 |
| 24-Oct | 4698 | 91.12 | 7590 | 91.19 |
| 25-Oct | 4677 | 91.1 | 7620 | 91.2 |
| 26-Oct | 4693 | 91.09 | 7659 | 91.14 |
| 27-Oct | 4728 | 91.11 | 7699 | 91.11 |
| 28-Oct | 4747 | 91.09 | 7710 | 91.08 |
| 29-Oct | 4735 | 91.09 | 7530 | 91.03 |
| 30-Oct | 4720 | 91.11 | 7008 | 90.94 |
| 31-Oct | 4740 | 91.07 | 6343 | 90.97 |

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| 1-Nov | 4740 | 91.07 | 6099 | 90.91 |
| 2-Nov | 4740 | 91.06 | 5952 | 90.94 |
| 3-Nov | 4730 | 91.01 | 5363 | 90.93 |
| 4-Nov | 4720 | 90.98 | 5029 | 90.94 |
| 5-Nov | 4720 | 91.05 | 4987 | 90.99 |
| 6-Nov | 4744 | 91.03 | 4973 | 91 |
| 7-Nov | 4661 | 91.01 | 4973 | 91.02 |
| 8-Nov | 4573 | 91.01 | 4968 | 91.05 |
| 9-Nov | 4573 | 91.01 | 5110 | 91.01 |
| 10-Nov | 4550 | 91.02 | 4970 | 91 |
| 11-Nov | 4547 | 91.03 | 4970 | 91.02 |
| 12-Nov | 4396 | 90.98 | 4980 | 90.99 |
| 13-Nov | 4340 | 90.98 | 4970 | 91.05 |
| 14-Nov | 4361 | 90.99 | 5110 | 91.1 |
| 15-Nov | 4393 | 91.02 | 5220 | 91.13 |
| 16-Nov | 4424 | 91.01 | 5340 | 91.13 |
| 17-Nov | 4382 | 91 | 5580 | 91.14 |
| 18-Nov | 4329 | 91.03 | 6010 | 91.14 |
| 19-Nov | 4354 | 91.07 | 6170 | 91.15 |
| 20-Nov | 4370 | 91.12 | 6254 | 91.06 |
| 21-Nov | 4720 | 91.07 | 6460 | 91.12 |
| 22-Nov | 4910 | 91.06 | 6220 | 91.05 |
| 23-Nov | 4950 | 91.04 | 6200 | 91.07 |
| 24-Nov | 4970 | 91.02 | 6245 | 91.02 |
| 25-Nov | 4950 | 91.01 | 6204 | 90.99 |
| 26-Nov | 5180 | 90.97 | 6202 | 91.03 |
| 27-Nov | 5705 | 90.96 | 6153 | 90.98 |
| 28-Nov | 6460 | 90.96 | 6112 | 90.94 |
| 29-Nov | 6879 | 90.98 | 6150 | 90.94 |
| 30-Nov | 7252 | 90.97 | 6080 | 90.92 |
| 1-Dec | 7644 | 90.86 | 6590 | 90.86 |
| 2-Dec | 7650 | 90.71 | 7510 | 90.87 |
| 3-Dec | 7543 | 90.66 | 8725 | 90.86 |
| 4-Dec | 8020 | 90.74 | 9100 | 90.73 |
| 5-Dec | 8512 | 90.66 | 9180 | 90.66 |
| 6-Dec | 8558 | 90.61 | 9250 | 90.54 |
| 7-Dec | 9216 | 90.62 | 9220 | 90.53 |
| 8-Dec | 9597 | 90.59 | 9880 | 90.43 |
| 9-Dec | 9624 | 90.46 | 10360 | 90.34 |
| 10-Dec | 10252 | 90.34 | 10408 | 90.2 |
| 11-Dec | 10750 | 90.24 | 10429 | 90.17 |
| 12-Dec | 11020 | 90.08 | 10604 | 90.14 |
| 13-Dec | 11090 | 90.04 | 10821 | 90.03 |
| 14-Dec | 11770 | 89.93 | 10925 | 89.86 |
| 15-Dec | 12130 | 89.82 | 11012 | 89.76 |
| 16-Dec | 12150 | 89.68 | 10983 | 89.69 |
| 17-Dec | 12010 | 89.6 | 10862 | 89.67 |
| 18-Dec | 12138 | 89.47 | 11170 | 89.61 |
| 19-Dec | 12133 | 89.38 | 11670 | 89.41 |
| 20-Dec | 12083 | 89.21 | 11740 | 89.25 |
| 21-Dec | 12046 | 89.14 | 11730 | 89.09 |

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| 22-Dec | 12017 | 88.99 | 11780 | 89 |
| 23-Dec | 12008 | 88.86 | 11810 | 88.9 |
| 24-Dec | 12075 | 88.66 | 11870 | 88.79 |
| 25-Dec | 12096 | 88.64 | 11950 | 88.7 |
| 26-Dec | 12088 | 88.46 | 11940 | 88.56 |
| 27-Dec | 12079 | 88.4 | 11910 | 88.46 |
| 28-Dec | 12117 | 88.28 | 11960 | 88.37 |
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| 30-Dec | 12104 | 88.02 | 11892 | 88.16 |
| 31-Dec | 12096 | 87.87 | 11888 | 87.99 |

Walter W. McDonald
To be returned to Tribal Office
Dec. 31, 1961

Copy No. 21

COMPILATION

of

TREATIES AND STATUTES
(vols. 1-68, Statutes at Large of the U.S.)

and Executive Orders, Proclamations,
the Constitution and By-Laws, and
the Corporate Charter

pertaining to

THE CONFEDERATED SALISH AND KOOTENAI TRIBES

OF THE FLATHEAD RESERVATION, MONTANA

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Property of the Confederated Tribes
Dixon, Montana

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- 1955 -

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# THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION, MONTANA

TREATIES AND STATUTES

Treaty of Hell Gate, July 16, 1855
Treaty of Upper Missouri, October 17, 1855
Special Statutes Affecting Flathead
Private Statutes Affecting Flathead
Appropriation Acts Naming Flathead

(Does not contain statutes generally applicable to all Indians, including Flathead Tribes, for which see Title 25, United States Code.)

TOGETHER with

Executive Orders
Proclamations
Constitution and Bylaws of the Tribes
Corporate Charter of the Tribes

This is Copy No.

This Volume is the property of the Confederated Salish and Kootenai Tribes of the Flathead Reservation. It is loaned to persons having particular business for the Tribes, on a temporary basis only, may be recalled by the Tribes at any time, and must be delivered without further demand when the particular office or assignment is completed.

1955

Compiled by Wilkinson, Cragun, Barker & Hawkins, 744 Jackson Place, N.W., Washington 6, D. C., General Counsel for the Tribes.

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| 1942 July 2 | 56 Stat. 506, 515, 516, 519, 526 | 102 |
| 1943 July 12 | 57 Stat. 451, 458, 459, 462, 468 | 103 |
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| 1944 April 1 | 58 Stat. 150, 170 | |
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| 1946 April 19 | 60 Stat. 103, 110 | 103 |
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| 1949 June 23 | 63 Stat. 231, 241 | 77 |
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| 1950 May 25 | 64 Stat. 192 | 79 |
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# TREATIES

Treaties

[Treaty of July 16, 1855, 12 Stat. 975]

JAMES BUCHANAN,

PRESIDENT OF THE UNITED STATES OF AMERICA,

TO ALL AND SINGULAR TO WHOM THESE PRESENTS SHALL COME, GREETING:

WHEREAS, a treaty was made and concluded at the treaty ground, at Hell Gate, in the Bitter Root Valley, on the sixteenth day of July, eighteen hundred and fifty-five, between Isaac I. Stevens, governor and superintendent of Indian affairs for the Territory of Washington, on the part of the United States, and the hereinafter named chiefs, headmen, and delegates of the confederated tribes of the Flathead, Kootenay, and Upper Pend d'Oreilles Indians, on behalf of and acting for said confederated tribes and duly authorized thereto, by them, which treaty is in the words and figures following, to wit:

Articles of agreement and convention made and concluded at the treaty ground at Hell Gate, in the Bitter Root Valley, this sixteenth day of July, in the year one thousand eight hundred and fifty-five, by and between Isaac I. Stevens, governor and superintendent of Indian affairs for the Territory of Washington, on the part of the United States, and the undersigned chiefs, headmen, and delegates of the confederated tribes of the Flathead, Kootenay, and Upper Pend d'Oreilles Indians, on behalf of and acting for said confederated tribes, and being duly authorized thereto by them. It being understood and agreed that the said confederated tribes do hereby constitute a nation, under the name of the Flathead nation, with Victor the head chief of the Flathead tribe, as the head chief of the said nation, and that the several chiefs, headmen, and delegates, whose names are signed to this treaty, do hereby, in behalf of their respective tribes, recognise Victor as said head chief.

ARTICLE I. The said confederated tribes of Indians hereby cede, relinquish, and convey to the United States all their right, title, and interest in and to the country occupied or claimed by them, bounded and described as follows, to wit:

Commencing on the main ridge of the Rocky Mountains at the forty-ninth (49th) parallel of latitude, thence westwardly on that parallel to the divide between the Flat-bow or Kootenay River and Clarke's Fork; thence southerly and southeasterly along said divide to the one hundred and fifteenth degree of longitude, (115°,) thence in a southwesterly direction to the divide between the sources of the St. Regis Borgia and the Coeur d'Alene Rivers, thence southeasterly and southerly along the main ridge of the Bitter Root Mountains to

the divide between the head waters of the Koos-koos-kee River and of the southwestern fork of the Bitter Root River, thence easterly along the divide separating the waters of the several tributaries of the Bitter Root River from the waters flowing into the Salmon and Snake Rivers to the main ridge of the Rocky Mountains, and thence northerly along said main ridge to the place of beginning.

ARTICLE II. There is, however, reserved from the lands above ceded, for the use and occupation of the said confederated tribes, and as a general Indian reservation upon which may be placed other friendly tribes and bands of Indians of the Territory of Washington who may agree to be consolidated with the tribes parties to this treaty, under the common designation of the Flathead nation, with Victor, head chief of the Flathead tribe, as the head chief of the nation, the tract of land included within the following boundaries, to wit:

Commencing at the source of the main branch of the Jocko River; thence along the divide separating the waters flowing into the Bitter Root River from those flowing into the Jocko to a point on Clarke's Fork between the Camash and Horse prairies; thence northerly to and along the divide bounding on the west the Flathead River, to a point due west from the point half way in latitude between the northern and southern extremities of the Flathead Lake; thence on a due east course to the divide whence the Crow, the Prune, the So-ni-el-em and the Jocko Rivers take their rise, and thence southerly along said divide to the place of beginning.

All which tract shall be set apart, and, so far as necessary, surveyed and marked out for the exclusive use and benefit of said confederated tribes as an Indian reservation. Nor shall any white man, excepting those in the employment of the Indian department, be permitted to reside upon the said reservation without permission of the confederated tribes, and the superintendent and agent. And the said said confederated tribes agree to remove to and settle upon the same within one year after the ratification of this treaty. In the meantime it shall be lawful for them to reside upon any ground not in the actual claim and occupation of citizens of the United States, and upon any ground claimed or occupied if with the permission of the owner or claimant.

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Guaranteeing however the right to all citizens of the United States to enter upon and occupy as settlers any lands not actually occupied and cultivated by said Indians at this time, and not included in the reservation above named. And provided, That any substantial improvements heretofore made by any Indian, such as fields enclosed and cultivated and houses erected upon the lands hereby ceded, and which he may be compelled to abandon in consequence of this treaty, shall

be valued under the direction of the President of the United States, and payment made therefor in money, or improvements of an equal value be made for said Indian upon the reservation; and no Indian will be required to abandon the improvements aforesaid, now occupied by him, until their value in money or improvements of an equal value shall be furnished him as aforesaid.

ARTICLE III. And provided, That if necessary for the public convenience roads may be run through the said reservation; and, on the other hand, the right of way with free access from the same to the nearest public highway is secured to them; as also the right in common with citizens of the United States to travel upon all public highways.

The exclusive right of taking fish in all the streams running through or bordering said reservation is further secured to said Indians; as also the right of taking fish at all usual and accustomed places, in common with citizens of the Territory, and of erecting temporary buildings for curing; together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.

ARTICLE IV. In consideration of the above cession, the United States agree to pay to the said confederated tribes of Indians, in addition to the goods and provisions distributed to them at the time of signing this treaty the sum of one hundred and twenty thousand dollars in the following manner--that is to say: For the first year after the ratification hereof, thirty-six thousand dollars, to be expended under the direction of the President in providing for their removal to the reservation, breaking up and fencing farms, building houses for them, and for such other objects as he may deem necessary. For the next four years, six thousand dollars each year; for the next five years, five thousand dollars each year; for the next five years, four thousand dollars each year; and for the next five years, three thousand dollars each year.

All which said sums of money shall be applied to the use and benefit of the said Indians, under the direction of the President of the United States, who may from time to time determine, at his discretion, upon what beneficial objects to expend the same for them, and the superintendent of Indian affairs, or other proper officer, shall each year inform the President of the wishes of the Indians in relation thereto.

ARTICLE V. The United States further agree to establish at suitable points within said reservation, within one year after the ratification hereof, an agricultural and industrial school, erecting the necessary buildings, keeping the same in repair, and providing it with furniture, books and stationery, to be located at the agency, and to be free to the children of the said tribes, and

to employ a suitable instructor or instructors. To furnish one blacksmith shop, to which shall be attached a tin and gun shop; one carpenter's shop; one wagon and ploughmaker's shop; and to keep the same in repair, and furnished with the necessary tools. To employ two farmers, one blacksmith, one tinner, one gunsmith, one carpenter, one wagon and plough maker, for the instruction of the Indians in trades, and to assist them in the same. To erect one saw-mill and one flouring-mill, keeping the same in repair and furnished with the necessary tools and fixtures, and to employ two millers. To erect a hospital, keeping the same in repair, and provided with the necessary medicines and furniture, and to employ a physician; and to erect, keep in repair, and provide with the necessary furniture the buildings required for the accommodation of the said employees. The said buildings and establishments to be maintained and kept in repair as aforesaid, and the employees to be kept in service for the period of twenty years.

And in view of the fact that the head chiefs of the said confederated tribes of Indians are expected and will be called upon to perform many services of a public character, occupying much of their time, the United States further agree to pay to each of the Flathead, Kootenay, and Upper Pend d'Oreilles tribes five hundred dollars per year, for the term of twenty years after the ratification hereof, as a salary for such persons as the said confederated tribes may select to be their head chiefs, and to build for them at suitable points on the reservation a comfortable house, and properly furnish the same, and to plough and fence for each of them ten acres of land. The salary to be paid to, and the said houses to be occupied by, such head chiefs so long as they may be elected to that position by their tribes, and no longer.

And all the expenditures and expenses contemplated in this article of this treaty shall be defrayed by the United States, and shall not be deducted from the annuities agreed to be paid to said tribes. Nor shall the cost of transporting the goods for the annuity payments be a charge upon the annuities, but shall be defrayed by the United States.

ARTICLE VI. The President may from time to time, at his discretion, cause the whole, or such portion of such reservation as he may think proper, to be surveyed into lots, and assign the same to such individuals or families of the said confederated tribes as are willing to avail themselves of the privilege, and will locate on the same as a permanent home, on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable.

ARTICLE VII. The annuities of the aforesaid confederated tribes of Indians shall not be taken to pay the debts of individuals.

ARTICLE VIII. The aforesaid confederated tribes of Indians acknowledge their dependence upon the government of the United States, and promise to be friendly with all citizens thereof, and pledge themselves to commit no depredations upon the property of such citizens. And should any one or more of them violate this pledge, and the fact be satisfactorily proved before the agent, the property taken sahll be returned, or in default thereof, or if injured or destroyed, compensation may be made by the government out of the annuities. Nor will they make war on any other tribe except in self-defence, but will submit all matters of difference between them and other Indians to the government of the United States, or its agent, for decision, and abide thereby. And if any of the said Indians commit any depredations on any other Indians within the jurisdiction of the United States, the same rule shall prevail as that prescribed in this article, in case of depredations against citizens. And the said tribes agree not to shelter or conceal offenders against the laws of the United States, but to deliver them up to the authorities for trial.

ARTICLE IX. The said confederated tribes desire to exclude from their reservation the use of ardent spirits, and to prevent their people from drinking the same; and therefore it is provided that any Indian belonging to said confederated tribes of Indians who is guilty of bringing liquor into said reservation, or who drinks liquor, may have his or her proportion of the annuities withheld from him or her for such time as the President may determine.

ARTICLE X. The United States further agree to guaranty the exclusive use of the reservation provided for in this treaty, as against any claims which may be urged by the Hudson Bay Company under the provisions of the treaty between the United States and Great Britain of the fifteenth of June, eighteen hundred and forty-six, in consequence of the occupation of a trading post on the Pru-in River by the servants of that company.

ARTICLE XI. It is, moreover, provided that the Bitter Root Valley, above the Loo-lo fork, shall be carefully surveyed and examined, and if it shall prove, in the judgment of the President, to be better adapted to the wants of the Flathead tribe than the general reservation provided for in this treaty, then such portions of it as may be necessary shall be set apart as a separate reservation for the said tribe. No portion of the Bitter Root Valley, above the Loo-lo fork, shall be opened to settlement until such examination is had and the decision of the President made known.

ARTICLE XII. This treaty shall be obligatory upon the contracting parties as soon as the same shall be ratified by the President and Senate of the United States.

In testimony whereof, the said Isaac I. Stevens, governor and superintendent of Indian affairs for the Territory of Washington, and the undersigned head chiefs, chiefs and principal men of the Flathead, Kootenay, and Upper Pend d'Oreilles tribes of Indians, have hereunto set their hands and seals, at the place and on the day and year hereinbefore written.

ISAAC I. STEVENS, Governor and Superintendent Indian Affairs W.T. [L.S.]

| | | |
|---|---|---|
| VICTOR, Head Chief of the Flathead Nation, | his x mark. | [L.S.] |
| ALEXANDER, Chief of the Upper Pend d'Oreilles, | his x mark. | [L.S.] |
| MICHELLE, Chief of the Kootenays, | his x mark. | [L.S.] |
| AMBROSE, | his x mark. | [L.S.] |
| PAH-SOH, | his x mark. | [L.S.] |
| BEAR TRACK, | his x mark. | [L.S.] |
| ADOLPHE | his x mark. | [L.S.] |
| THUNDER, | his x mark. | [L.S.] |
| BIG CANOE, | his x mark. | [L.S.] |
| KOOTEL CHAH, | his x mark. | [L.S.] |
| PAUL, | his x mark. | [L.S.] |
| ANDREW, | his x mark. | [L.S.] |
| MICHELLE, | his x mark. | [L.S.] |
| BATTISTE, | his x mark. | [L.S.] |

Kootenays

| | | |
|---|---|---|
| GUN FLINT, | his x mark. | [L.S.] |
| LITTLE MICHELLE, | his x mark. | [L.S.] |
| PAUL SEE, | his x mark. | [L.S.] |
| MOSES, | his x mark. | [L.S.] |

James Doty, Secretary.
R. H. Lansdale, Indian Agent
W. H. Tappan, Sub Indian Agent.
Henry R. Crosire,
Gustavus Sohon, Flathead Interpreter.
A. J. Hoecken, Sp. Mis.
William Craig.

And, whereas, the said treaty having been submitted to the Senate of the United States for their constitutional action thereon, the Senate did, on the eighth day of March, eighteen hundred and fifty-nine, advise and consent to the ratification of the same, by a resolution in the words and figures following, to wit:

"In Executive Session,
"Senate of the United States, March 8, 1859.

"Resolved, (two thirds of the senators present concurring,) That the Senate advise and consent to the ratification of treaty between the United States and Chiefs, Headmen and Delegates of the

confederate tribes of the Flathead, Kootenay, and Upper Pend d'Oreilles Indians, who are constituted a nation under the name of the Flathead Nation, signed 16th day of July, 1855.

"Attest: "ASBURY DICKINS, Secretary."

Now, therefore, be it known that I, JAMES BUCHANAN, President of the United States of America, do, in pursuance of the advice and consent of the Senate, as expressed in their resolution of the eighth of March, one thousand eight hundred and fifty-nine, accept, ratify, and confirm the said treaty.

In testimony whereof, I have hereunto caused the seal of the United States to be affixed, and have signed the same with my hand.

Done at the city of Washington, this eighteenth day of April, in the year of our Lord one thousand eight
[Seal.] hundred and fifty-nine, and of the Independence of the United States, the eighty-third.

JAMES BUCHANAN.

By the President:
LEWIS CASS, Secretary of State.

[October 17, 1855, 11 Stat. 657]

FRANKLIN PIERCE

PRESIDENT OF THE UNITED STATES OF AMERICA

To all persons to whom these presents shall come, greeting:

WHEREAS, a treaty was made and concluded at the council ground on the Upper Missouri, near the mouth of the Judith River, in the territory of Nebraska, on the seventeenth day of October, in the year one thousand eight hundred and fifty-five, between A. Cumming and Isaac I. Stevens, commissioners on the part of the United States, and the Blackfoot and other tribes of Indians, which treaty is in the words and figures following, to wit:--

Articles of agreement and convention made and concluded at the council ground on the Upper Missouri, near the mouth of the Judith River, in the territory of Nebraska, this seventeenth day of October, in the year one thousand eight hundred and fifty-five, by and between A. Cumming and Isaac I. Stevens, commissioners duly appointed and authorized, on the part of the United States, and the undersigned chiefs, headmen, and delegates of the following nations and tribes of Indians, who occupy, for the purposes of hunting, the territory on the Upper Missouri and Yellow Stone Rivers, and who have permanent homes as follows: East of the Rocky Mountains, the Blackfoot nation; consisting of the Piegan, Blood, Blackfoot, and Gros Ventres tribes of Indians. West of the Rocky Mountains, the Flathead nation; consisting of the Flathead, Upper Pend d'Oreille, and Kootenay tribes of Indians, and the Nez Perce tribe of Indians, the said chiefs, headmen and delegates, in behalf of and acting for said nations and tribes, and being duly authorized thereto by them.

ARTICLE 1. Peace, friendship and amity shall hereafter exist between the United States and the aforesaid nations and tribes of Indians, parties to this treaty, and the same shall be perpetual.

ARTICLE 2. The aforesaid nations and tribes of Indians, parties to this treaty, do hereby jointly and severally covenant that peaceful relations shall likewise be maintained among themselves in future; and that they will abstain from all hostilities whatsoever against each other, and cultivate mutual good-will and friendship. And the nations and tribes aforesaid do furthermore jointly and severally covenant, that

peaceful relations shall be maintained with and that they will abstain from all hostilities whatsoever, excepting in self-defence, against the following named nations and tribes of Indians, to wit: the Crows, Assineboins, Crees, Snakes, Blackfeet, Sans Arce, and Aunce-pa-pas bands of Sioux, and all other neighboring nations and tribes of Indians.

ARTICLE 3. The Blackfoot nation consent and agree that all that portion of the country recognized and defined by the treaty of Laramie as Blackfoot territory, lying within lines drawn from the Hell Gate or Medicine Rock Passes in the main range of the Rocky Mountains, in an easterly direction to the nearest source of the Muscle Shell River, thence to the mouth of Twenty-five Yard Creek, thence up the Yellow Stone River to its northern source, and thence along the main range of the Rocky Mountains, in a northerly direction, to the point of beginning, shall be a common hunting-ground for ninety-nine years, where all the nations, tribes and bands of Indians, parties to this treaty, may enjoy equal and uninterrupted privileges of hunting, fishing and gathering fruit, grazing animals, curing meat and dressing robes. They further agree that they will not establish villages, or in any other way exercise exclusive rights within ten miles of the northern line of the common hunting-ground, and that the parties to this treaty may hunt on said northern boundary line and within ten miles thereof.

Provided, That the western Indians, parties to this treaty, may hunt on the trail leading down the Muscle Shell to the Yellow Stone; the Muscle Shell River being the boundary separating the Blackfoot from the Crow Territory.

And provided, That no nation, band or tribe of Indians parties to this treaty, nor any other Indians, shall be permitted to establish permanent settlements, or in any other way exercise, during the period above mentioned, exclusive rights or privileges within the limits of the above-described hunting-ground.

And provided further, That the rights of the western Indians to a whole or a part of the common hunting-ground, derived from occupancy and possession, shall not be affected by this article, except so far as said rights may be determined by the treaty of Laramie.

ARTICLE 4. The parties to this treaty agree and consent, that the tract of country lying within lines drawn from the Hell Gate or Medicine Rock Passes, in an easterly direction, to the nearest source of the Muscle Shell River, thence down said river to its mouth, thence down the channel

of the Missouri River to the mouth of Milk River, thence due north to the forty-ninth parallel, thence due west on said parallel to the main range of the Rocky Mountains, and thence southerly along said range to the place of beginning, shall be the territory of the Blackfoot nation, over which said nation shall exercise exclusive control, excepting as may be otherwise provided in this treaty. Subject, however, to the provisions of the third article of this treaty, giving the right to hunt, and prohibiting the establishment of permanent villages and the exercise of any exclusive rights within ten miles of the northern line of the common hunting-ground, drawn from the nearest source of the Muscle Shell River to the Medicine Rock Passes, for the period of ninety-nine years.

Provided also, That the Assiniboins shall have the right of hunting, in common with the Blackfeet, in the country lying between the aforesaid eastern boundary line, running from the mouth of Milk River to the forty-ninth parallel, and a line drawn from the left bank of the Missouri River, opposite the Round Butte north, to the forty-ninth parallel.

ARTICLE 5. The parties to this treaty, residing west of the main range of the Rocky Mountains, agree and consent that they will not enter the common hunting-ground, nor any part of the Blackfoot Territory, or return home, by any pass in the main range of the Rocky Mountains to the north of the Hell Gate or Medicine Rock Passes. And they further agree that they will not hunt or otherwise disturb the game, when visiting the Blackfoot Territory for trade or social intercourse.

ARTICLE 6. The aforesaid nations and tribes of Indians, parties to this treaty, agree and consent to remain within their own respective countries except when going to or from, or whilst hunting upon, the "common hunting-ground," or when visiting each other for the purpose of trade or social intercourse.

ARTICLE 7. The aforesaid nations and tribes of Indians agree that citizens of the United States may live in and pass unmolested through the countries respectively occupied and claimed by them. And the United States is hereby bound to protect said Indians against depredations and other unlawful acts which white men residing in or passing through their country may commit.

ARTICLE 8. For the purpose of establishing travelling thoroughfares through their country, and the better to enable the President to execute the provisions of this treaty, the aforesaid nations and tribes do hereby consent and agree, that the United States may, within the country respectively

occupied and claimed by them, construct roads of every description; establish lines of telegraph and military posts; use materials of every description found in the Indian country; build houses for agencies, missions, schools, farms, shops, mills, stations, and for any other purpose for which they may be required, and permanently occupy as much land as may be necessary for the various purposes above enumerated, including the use of wood for fuel and land for grazing, and that the navigation of all lakes and streams shall be forever free to citizens of the United States.

ARTICLE 9. In consideration of the foregoing agreements, stipulations, and cessions, and on condition of their faithful observance, the United States agree to expend, annually, for the Piegan, Blood, Blackfoot, and Gros Ventre tribes of Indians, constituting the Blackfoot nation, in addition to the goods and provisions distributed at the time of signing this treaty, twenty thousand dollars, annually, for ten years, to be expended in such useful goods and provisions, and other articles, as the President, at his discretion, may from time to time determine; and the superintendent, or other proper officer, shall each year inform the President of the wishes of the Indians in relation thereto: Provided, however, That if, in the judgment of the President and Senate, this amount be deemed insufficient, it may be increased not to exceed the sum of thirty-five thousand dollars per year.

ARTICLE 10. The United States further agree to expend annually, for the benefit of the aforesaid tribes of the Blackfoot nation, a sum not exceeding fifteen thousand dollars annually, for ten years, in establishing and instructing them in agricultural and mechanical pursuits, and in educating their children, and in any other respect promoting their civilization and christianization: Provided, however, That to accomplish the objects of this article, the President may, at his discretion, apply any or all the annuities provided for in this treaty: And provided, also, That the President may, at his discretion, determine in what proportions the said annuities shall be divided among the several tribes.

ARTICLE 11. The aforesaid tribes acknowledge their dependence on the government of the United States, and promise to be friendly with all citizens thereof, and to commit no depredations or other violence upon such citizens. And should any one or more violate this pledge, and the fact be proved to the satisfaction of the President, the property taken shall be returned, or, in default thereof, or if injured or destroyed, compensation may be made by the

government out of the annuities. The aforesaid tribes are hereby bound to deliver such offenders to the proper authorities for trial and punishment, and are held responsible in their tribal capacity, to make reparation for depredations so committed.

Nor will they make war upon any other tribes, except in self-defence, but will submit all matters of difference between themselves and other Indians to the government of the United States, through its agent, for adjustment, and will abide thereby. And if any of the said Indians, parties to this treaty, commit depredations on any other Indians within the jurisdiction of the United States, the same rule shall prevail as that prescribed in this article in case of depredations against citizens. And the said tribes agree not to shelter or conceal offenders against the laws of the United States, but to deliver them up to the authorities for trial.

ARTICLE 12. It is agreed and understood, by and between the parties to this treaty, that if any nation or tribe of Indians aforesaid, shall violate any of the agreements, obligations, or stipulations, herein contained, the United States may withhold for such length of time as the President and Congress may determine, any portion or all of the annuities agreed to be paid to said nation or tribe under the ninth and tenth articles of this treaty.

ARTICLE 13. The nations and tribes of Indians, parties to this treaty, desire to exclude from their country the use of ardent spirits or other intoxicating liquor, and to prevent their people from drinking the same. Therefore it is provided, that any Indian belonging to said tribes who is guilty of bringing such liquor into the Indian country, or who drinks liquor, may have his or her proportion of the annuities withheld from him or her, for such time as the President may determine.

ARTICLE 14. The aforesaid nations and tribes of Indians, west of the Rocky Mountains, parties to this treaty, do agree, in consideration of the provisions already made for them in existing treaties, to accept the guarantees of the peaceful occupation of their hunting-grounds, east of the Rocky Mountains, and of remuneration for depredations made by the other tribes, pledged to be secured to them in this treaty out of the annuities of said tribes, in full compensation for the concessions which they, in common with the said tribes, have made in this treaty.

The Indians east of the Mountains, parties to this treaty, likewise recognize and accept the guarantees of this

treaty, in full compensation for the injuries or depredations which have been, or may be committed by the aforesaid tribes, west of the Rocky Mountains.

ARTICLE 15. The annuities of the aforesaid tribes shall not be taken to pay the debts of individuals.

ARTICLE 16. This treaty shall be obligatory upon the aforesaid nations and tribes of Indians, parties hereto, from the date hereof, and upon the United States as soon as the same shall be ratified by the President and Senate.

In testimony whereof the said A. Cumming and Isaac I. Stevens, commissioners on the part of the United States, and the undersigned chiefs, headmen, and delegates of the aforesaid nations and tribes of Indians, parties to this treaty, have hereunto set their hands and seals at the place and on the day and year hereinbefore written.

A. CUMMING. [L.S.]
ISAAC I. STEVENS. [L.S.]

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| | | |
|---|---|---|
| NEE-TI-NEE, or "the only chief," now called the Lame Bull, | his x mark. | [L.S.] |
| MOUNTAIN CHIEF, | his x mark. | [L.S.] |
| LOW HORN, | his x mark. | [L.S.] |
| LITTLE GRAY HEAD, | his x mark. | [L.S.] |
| LITTLE DOG, | his x mark. | [L.S.] |
| BIG SNAKE, | his x mark. | [L.S.] |
| THE SKUNK, | his x mark. | [L.S.] |
| THE BAD HEAD, | his x mark. | [L.S.] |
| KITCH-EEPONE-ISTAH, | his x mark. | [L.S.] |
| MIDDLE SITTER, | his x mark. | [L.S.] |

Bloods

| | | |
|---|---|---|
| ONIS-TAY-SAY-NAH-QUE-IM, | his x mark. | [L.S.] |
| THE FATHER OF ALL CHILDREN, | his x mark. | [L.S.] |
| THE BULL'S BACK FAT, | his x mark. | [L.S.] |
| HEAVY SHIELD, | his x mark. | [L.S.] |
| NAH-TOSE-ONISTAH, | his x mark. | [L.S.] |
| THE CALF SHIRT, | his x mark. | [L.S.] |

Gros Ventres

| | | |
|---|---|---|
| BEAR'S SHIRT, | his x mark. | [L.S.] |
| LITTLE SOLDIER, | his x mark. | [L.S.] |
| STAR ROBE, | his x mark. | [L.S.] |

| | | |
|---|---|---|
| SITTING SQUAW, | his x mark. | [L.S.] |
| WEASEL HORSE, | his x mark. | [L.S.] |
| THE RIDER, | his x mark. | [L.S.] |
| EAGLE CHIEF, | his x mark. | [L.S.] |
| HEAP OF BEARS, | his x mark. | [L.S.] |

Blackfeet

| | | |
|---|---|---|
| THE THREE BULLS, | his x mark. | [L.S.] |
| THE OLD KOOTOMAIS, | his x mark. | [L.S.] |
| POW-AH-AUE, | his x mark. | [L.S.] |
| CHIEF RABBIT RUNNER, | his x mark. | [L.S.] |

Nez Perces

| | | |
|---|---|---|
| SPOTTED EAGLE, | his x mark. | [L.S.] |
| LOOKING GLASS, | his x mark. | [L.S.] |
| THE THREE FEATHERS, | his x mark. | [L.S.] |
| EAGLE FROM THE LIGHT, | his x mark. | [L.S.] |
| THE LONE BIRD, | his x mark. | [L.S.] |
| IP-SHUN-NEE-WUS, | his x mark. | [L.S.] |
| JASON, | his x mark. | [L.S.] |
| WAT-TI-WAT-TI-WE-HINCK, | his x mark. | [L.S.] |
| WHITE BIRD, | his x mark. | [L.S.] |
| STABBING MAN, | his x mark. | [L.S.] |
| JESSE, | his x mark. | [L.S.] |
| PLENTY BEARS, | his x mark. | [L.S.] |

Flathead Nation

| | | |
|---|---|---|
| VICTOR, | his x mark. | [L.S.] |
| ALEXANDER, | his x mark. | [L.S.] |
| MOSES, | his x mark. | [L.S.] |
| BIG CANOE, | his x mark. | [L.S.] |
| AMBROSE, | his x mark. | [L.S.] |
| KOOTLE-CHA, | his x mark. | [L.S.] |
| MICHELLE, | his x mark. | [L.S.] |
| FRANCIS, | his x mark. | [L.S.] |
| VINCENT, | his x mark. | [L.S.] |
| ANDREW, | his x mark. | [L.S.] |
| ADOLPHE, | his x mark. | [L.S.] |
| THUNDER, | his x mark. | [L.S.] |

Piegans

| | | |
|---|---|---|
| RUNNING RABBIT, | his x mark. | [L.S.] |
| CHIEF BEAR, | his x mark. | [L.S.] |
| THE LITTLE WHITE BUFFALO, | his x mark. | [L.S.] |
| THE BIG STRAW, | his x mark. | [L.S.] |

Flathead

BEAR TRACK, his x mark. [L.S.]
LITTLE MICHELLE, his x mark. [L.S.]
PLACHINAH, his x mark. [L.S.]

Bloods

THE FEATHER, his x mark. [L.S.]
THE WHITE EAGLE, his x mark. [L.S.]

Executed in presence of--

JAMES DOTY, Secretary.
ALFRED J. VAUGHAN, Jr.
E. ALW. HATCH, Agent for Blackfeet.
THOMAS ADAMS, Special Agent Flathead Nation.
R. H. LANSDALE, Indian Agent Flathead Nation.
W. H. TAPPAN, Sub-Agent for the Nez Perces.
JAMES BIRD, )
A. CULBERTSON, )- Blackfoot Interpreters.
BENJ. DEROCHE, )
BENJ. KISER, his x mark, )- Flathead Interpreters.
Witness, JAMES DOTY, )
GUSTAVUS SOHON, )
W. CRAIG, )
DELAWARE JIM, his x mark, )- Nez Perce Interpreters.
Witness, JAMES DOTY )
A. CREE CHIEF, (BROKEN ARM,) his mark.
Witness, JAMES DOTY.
A. J. HOEEKEORSG,
JAMES CROKE,
E. S. WILSON,
A. C. JACKSON,
CHARLES SHUCETTE, his x mark.
CHRIST. P. HIGGINS,
A. H. ROBIE,
S. S. FORD, Jr.

And whereas, the said treaty having been submitted to the Senate of the United States for its constitutional action thereon, the Senate did, on the fifteenth day of April, eighteen hundred and fifty-six, advise and consent to the ratification of the same, by a resolution in the words and figures following, to wit:

IN EXECUTIVE SESSION, SENATE OF THE UNITED STATES,

April 15, 1856.

Resolved, (two thirds of the Senators present concurring,) That the Senate advise and consent to the ratifica-

tion of the articles of agreement and convention made and concluded between the United States and the Blackfeet and other tribes of Indians, at the council ground on the Upper Missouri River, October seventeenth, eighteen hundred and fifty-five.

Attest: ASBURY DICKINS, Secretary.

Now, therefore, be it known, that I, FRANKLIN PIERCE, President of the United States of America, do, in pursuance of the advice and consent of the Senate, as expressed in their resolution of the fifteenth day of April, one thousand eight hundred and fifty-six, accept, ratify, and confirm the said treaty.

In testimony whereof, I have caused the seal of the United States to be hereto affixed, having signed the same with my hand.

Done at the city of Washington, this twenty-fifth day of April, A.D. one thousand eight hundred and fifty-
[L.S.] six, and of the independence of the United States the eightieth.

FRANKLIN PIERCE.

By the President:

W. L. MARCY, Secretary of State.

# EXECUTIVE ORDERS

[1 Kapp. 854]

EXECUTIVE MANSION, November 14, 1871.

The Bitter Root Valley, above the Loo-lo Fork, in the Territory of Montana, having been carefully surveyed and examined in accordance with the eleventh article of the treaty of July 16, 1855, concluded at Hell Gate, in the Bitter Root Valley, between the United States and the Flathead, Kootenay, and Upper Pend d'Oreilles Indians, which was ratified by the Senate March 8, 1859, has proved, in the judgment of the President, not to be better adapted to the wants of the Flathead Tribe than the general reservation provided for in said treaty; it is therefore deemed unnecessary to set apart any portion of said Bitter Root Valley as a separate reservation for Indians referred to in said treaty. It is therefore ordered and directed that all Indians residing in said Bitter Root Valley be removed as soon as parcticable to the reservation provided for in the second article of said treaty, and that a just and impartial appraisement be made of any substantial improvements made by said Indians upon any lands of the Bitter Root Valley, such as fields inclosed and cultivated and houses erected; that such appraisement shall distinguish between improvements made before the date of said treaty and such as have been subsequently made.

It is further ordered that, after the removal herein directed shall have been made, the Bitter Root Valley aforesaid shall be open to settlement.

It is further ordered that if any of said Indians residing in the Bitter Root Valley desire to become citizens and reside upon the lands which they now occupy, not exceeding in quantity what is allowed under the homestead and preemption laws to all citizens, such persons shall be permitted to remain in said valley upon making known to the superintendent of Indian affairs for Montana Territory by the 1st day of January, 1873, their intention to comply with these conditions.

U. S. GRANT.

[3 Kapp. 679]

FLATHEAD RESERVATION

Whereas it is believed that the following-described land, to wit:

Lot three of section two, in township twenty-two north, of range twenty-four west, of the Montana meridian, in the State of Montana, is a natural and prospective center of population:

Now, therefore, I, William Howard Taft, President of the United States of America, by virtue of the power in me vested by the act of Congress entitled "An act for the survey and allotment of lands now embraced within the limits of the Flathead Indian Reservation, in the State of Montana, and the sale and disposal of all surplus lands after allotment," approved April 23, 1904 (33 Stats., 302), and by sections 2380 and 2381 of the Revised Statutes of the United States, do hereby declare and make known that the land above described is hereby reserved as a town site, to be disposed of by the United States under the terms of the statutes applicable thereto.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this fifteenth day of February, in the year of our Lord one thousand nine hundred and twelve, and of the independence of the United States the one hundred and thirty-sixth.

[Seal.] Wm. H. Taft

By the President:
HUNTINGTON WILSON,
Acting Secretary of State.

THE WHITE HOUSE, April 13, 1912.

It is ordered that the NE. 1/4 of the SW. 1/4 of sec. 31, T. 19 N., R. 23 W., M.P.M., in the Flathead Indian Reservation, Montana, be, and the same is hereby, withdrawn from settlement, location, sale, and entry, and reserved for examination and classification, subject to all of the provisions, limitations, exceptions, and conditions contained in the act of June 25, 1910 (36 Stat., 847).

Wm. H. Taft.

[January 14, 1913, 4 Kapp. 1026]

FLATHEAD

It is hereby ordered that the SE. 1/4 of the SW. 1/4 of section 9, township 18 north, range 21 west, Montana meridian, containing 40 acres, be, and the same is hereby, withdrawn from entry and set apart for administrative purposes in connection with the affairs of the Flathead Indians in the State of Montana: Provided, however, That this withdrawal shall not affect the valid prior rights of any persons to the lands described.

Wm. H. Taft.

THE WHITE HOUSE, Jany. 14, 1913.

[April 13, 1912, 3 Kapp. 679]

DISPOSAL OF LANDS IN THE FLATHEAD INDIAN RESERVATION, STATE OF MONTANA

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION.

Whereas it is believed that the following-described land, to wit:

Lot 3 of sec. 2, in T. 22 N., R.24 W., of the Montana meridian, in the State of Montana, is a natural and prospective center of population:

Now, therefore, I, William Howard Taft, President of the United States of America, by virtue of the power in me vested by the act of Congress entitled "An act for the survey and allotment of lands now embraced within the limits of the Flathead Indian Reservation in the State of Montana, and the sale and disposal of all surplus lands after allotment," approved April 23, 1904 (33 Stats., 302), and by sections 2380 and 2381 of the Revised Statutes of the United States, do hereby declare and make known that the land above described is hereby reserved as a town site, to be disposed of by the United States under the terms of the statutes applicable thereto.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, this fifteenth day of February, in the year of our Lord one thousand nine hundred and twelve, and of

the independence of the United States the one hundred and thirty-sixth.

[Seal]

Wm. H. Taft.

By the President:
HUNTINGTON WILSON, Acting Secretary of State.
(No. 1182)

[April 13, 1912, 3 Kapp. 680]

It is ordered, That the NE. 1/4 of the SW. 1/4 of sec. 31, T. 19 N., R. 23 W., Montana principal meridian, in the Flathead Indian Reservation, Mont., be, and the same is hereby, withdrawn from settlement, location, sale, and entry, and reserved for examination and classification, subject to all of the provisions, limitations, exceptions, and conditions contained in the act of June 25, 1910 (36 Stats., 847).

Wm. H. Taft.

THE WHITE HOUSE, April 13, 1912.
(No. 1518.)

[November 23, 1932 5 Kapp. 642]

EXTENSION OF TRUST PERIOD ON INDIAN RESERVATION ALLOTMENTS

It is hereby ordered, under authority contained in section 5 of the act of February 8, 1887 (24 Stat. 388, 389), and the act of June 21, 1906 (34 Stat. 325, 326), that the period of trust covering allotments made in favor of Indians on the following-named reservations, or on other reservations not specifically named herein, which trust will expire during the calendar year 1933, be, and the same is hereby, extended for a period of 10 years from the respective dates of expiration thereof:

Round Valley Reservations, Calif.
White Earth Reservation, Minn.
Flathead Reservation, Mont.
Santee Reservation, Nebr.
Devils Lake and Standing Rock Reservations, N. Dak.
Kiowa Reservation, Okla.
Pine Ridge Reservation, S. Dak.
Shoshone or Wind River Reservation, Wyo.

HERBERT HOOVER.

THE WHITE HOUSE, November 23, 1932.

[No. 5953]

NOTE: The Flathead Indian Tribe have accepted the provisions of the Indian Reorganization Act, 48 Stat. 984, which extend indefinitely the trust status of the Reservation lands.

# PROCLAMATIONS

[May 22, 1909, 3 Kapp.655]

BY THE PRESIDENT OF THE UNITED STATES.

A PROCLAMATION.

I, William H. Taft, President of the United States of America, by virtue of the power and authority vested in me by the Acts of Congress hereinafter named, do hereby prescribe, proclaim and make known that all the nonmineral, unreserved lands classified as agricultural lands of the first class, agricultural lands of the second class and grazing lands within the Flathead Indian Reservation in the State of Montana under the Act of Congress approved April 23, 1904 (33 Stat. L., 302), which have not been withdrawn under the Act of Congress approved June 17, 1902 (32 Stat. L., 388); all the nonmineral unreserved lands classified as agricultural lands within the Spokane Indian Reservation in the State of Washington under the Act of Congress approved May 29, 1908 (35 Stat. L., 458); and all the nonmineral, unreserved lands classified as agricultural lands, grazing lands and timbered lands in the Coeur d'Alene Indian Reservation in the State of Idaho under the Act of Congress approved June 21, 1906 (34 Stat. L., 335), shall be disposed of under the provisions of the homestead laws of the United States and said Acts of Congress and be opened to settlement and entry in the following manner and not otherwise:

1. All persons qualified to make a homestead entry may, on and after the fifteenth day of July and prior to and including the fifth day of August, 1909, but not theretofore or thereafter, present to James W. Witten, Superintendent of the Opening, at the City of Coeur d'Alene in the State of Idaho, by ordinary mail, but not in person or by registered mail or otherwise, sealed envelopes containing their applications for registration for lands in any or all of said Reservations, but no envelope should contain more than one application and no person should present more than one application for lands in the same Reservation.

2. All applications for registration must be on forms furnished by the General Land Office and they must show the name, post office address, age, height and weight of the applicant and be sworn to by him on or after July 15 and prior to and including August 5, 1909, before some notary public designated by said Superintendent.

3. Applications for registration must be sworn to at the following places and not elsewhere. Applications for Flathead lands must be sworn to at either Kalispell or Missoula, Montana, for Spokane lands at Spokane, Washington, and for Coeur d'Alene lands at Coeur d'Alene, Idaho.

4. Persons who are honorably discharged after ninety days service in the army or navy of the United States, during the War of the Rebellion, the Spanish-American War or the Philippine Insurrection, or their widows or minor orphan children, may present their applications for registration, either in person or through their duly appointed agents, but no person can act as agent for more than one such applicant and all applications presented by agents must be signed, sworn to and presented by them at the same places and in the same manner in which other applicants are required to present their applications.

5. Beginning at ten o'clock a.m. on August 9, 1909, at the City of Coeur d'Alene in the State of Idaho and continuing thereafter from day to day, Sundays excepted, as long as may be necessary, there shall be impartially taken and selected indiscriminately from the whole number of envelopes so presented such number thereof as may be necessary to carry into effect the provisions of this Proclamation, and the applications for registration contained in the envelopes so selected shall, when correct in form and execution, be numbered serially in the order in which they are selected, beginning with number one for the lands within each of said Reservations, and the numbers thus assigned shall fix and control the order in which the persons named therein may make entry after the lands shall become subject to entry.

6. A list of the successful applicants, showing the number assigned to each of them, will be conspicuously posted and furnished to the press for publication as a matter of news, and a proper notice will be promptly mailed to each person to whom a number is assigned.

7. Beginning at nine o'clock a. m. on April 1, 1910, and continuing thereafter on such dates as may be fixed by the Secretary of the Interior, persons holding numbers assigned to them under this Proclamation will be permitted to present their applications to enter (or file their declaratory statements in cases where they are entitled to file declaratory statements) at the land office for any land district in which their numbers entitle them to make entry, in the order in which their applications for registration were selected and numbered, but no person can present more than one application to enter or file more than one declaratory statement.

8. If any person fails to apply to enter, or to file a declaratory statement if he is entitled to do so, on the day assigned him for that purpose, or if he presents more than one application for registration for lands within the same Reservation, or presents an application in any other than his true name, he will forfeit his right to make entry or filing under this Proclamation.

9. None of the lands opened to entry under this Proclamation shall become subject to settlement or entry prior to the first day of September, 1910, except in the manner prescribed herein; and all persons are admonished not to make any settlement prior to that date on lands not covered by entries or filings made by them under this Proclamation. On September 1, 1910, all of said lands which have not then been entered under this Proclamation will become subject to settlement and entry under the general provisions of the homestead laws and the said Acts of Congress.

10. The Secretary of the Interior shall make and prescribe such rules and regulations as may be necessary and proper to carry this Proclamation and the said Acts of Congress into full force and effect.

IN WITNESS WHEREOF I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this 22nd day of May in the year of our Lord one thousand nine hundred and nine [Seal.] and of the Independence of the United States the one hundred and thirty-third.

Wm. H. Taft

By the President:
P C Knox
Secretary of State

[February 15, 1912, 3 Kapp. 663]

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS, it is believed that the following described land, to wit:

Lot three of section two, in township twenty-two north, of range twenty-four west, of the Montana Meridian, in the State of Montana, is a natural and prospective center of population:

NOW THEREFORE, I, WILLIAM HOWARD TAFT, President of the United States of America, by virtue of the power in me vested by the Act of Congress entitled "An Act for the survey and allotment of lands now embraced within the limits of the Flathead Indian Reservation in the State of Montana, and the sale and disposal of all surplus lands

after allotment", approved April 23, 1904 (33 Stats. 302), and by sections 2380 and 2381 of the Revised Statutes of the United States, do hereby declare and make known that the land above described is hereby reserved as a townsite, to be disposed of by the United States under the terms of the Statutes applicable thereto.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington, this fifteenth day of February, in the year of our Lord one thousand nine hundred and [Seal] twelve, and of the independence of the United States the one hundred and thirty-sixth.

Wm H Taft

By the President:
HUNTINGTON WILSON
Acting Secretary of State.

## SPECIAL STATUTES

[June 5, 1872, 17 Stat. 226]

CHAP. CCCVIII.—An Act to provide for the Removal of the Flathead and other Indians from the Bitter Root Valley, in the Territory of Montana.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be the duty of the President, as soon as practicable, to remove the Flathead Indians, (whether of full or mixed bloods,) and all other Indians connected with said tribe, and recognized as members thereof, from Bitter Root valley in the Territory of Montana, to the general reservation in said Territory, (commonly known as the Jocko reservation,) which by a treaty concluded at Hell Gate, in the Bitter Root valley, July sixteenth, eighteen hundred and fifty-five, and ratified by the Senate March eighth, eighteen hundred and fifty-nine, between the United States and the confederated tribes of Flathead, Kootenai, and Pend d'Oreille Indians was set apart and reserved for the use and occupation of said confederated tribes.

Sec. 2. That as soon as practicable after the passage of this act, the surveyor-general of Montana Territory shall cause to be surveyed, as other public lands of the United States are surveyed, the lands in the Bitter Root valley lying above the Lo-Lo fork of the Bitter Root river; and said lands shall be open to settlement, and shall be sold in legal subdivisions to actual settlers only, the same being citizens of the United States, or having duly declared their intention to become such citizens, said settlers being heads of families, or over twenty-one years of age, in quantities not exceeding one hundred and sixty acres to each settler, at the price of one dollar and twenty-five cents per acre, payment to be made in cash within twenty-one months from the date of settlement, or of the passage of this act. The sixteenth and thirty-sixth sections of said lands shall be reserved for school purposes in the manner provided by law. Town-sites in said valley may be reserved and entered as provided by law: Provided, That no more than fifteen townships of the lands so surveyed shall be deemed to be subject to the provisions of this act: And provided further, That none of the lands in said valley above the Lo-Lo fork shall be open to settlement under the homestead and preemption laws of the United States. An account shall be kept by the Secretary of the Interior of the proceeds of said lands, and out of the first moneys arising therefrom there shall be reserved and set apart for the use of said Indians the sum of fifty thousand dollars, to be by the President expended, in annual instalments, in such manner as in his judgment shall be for the best good of said Indians, but no more than five thousand dollars shall be expended in any one year.

Sec. 3. That any of said Indians, being the head of a family, or twenty-one years of age, who shall, at the passage of this act, be actually residing upon and cultivating any portion of said lands, shall be permitted to remain in said valley and pre-empt without cost the land so occupied and cultivated, not exceeding in amount one hundred and sixty acres for each of such Indians, for which he shall receive a patent without power of alienation: Provided, That such Indian shall, prior to August first, eighteen hundred and seventy-two, notify the superintendent of Indian affairs for Montana Territory that he abandons his tribal relations with said tribe, and intends to remain in said valley: And provided further, That said superintendent shall have given such Indian at least one month's notice prior to the date last above mentioned of the provisions of this act and of his right so to remain as provided in this section of this act.

Sec. 4. That in case John Owen, an actual settler in said valley, above the Lo-Lo fork, shall come within the provisions of the act of Congress of September twenty-seventh, eighteen hundred and fifty, entitled "An act to create the office of surveyor-general of the public lands in Oregon, and to provide for the survey, and to make donations to settlers of the said public lands" and the acts amendatory thereof, he shall be permitted to establish such fact in the land-office in the said Territory of Montana, and, upon proof of compliance with the provisions of said act or acts, shall be permitted to obtain title, in the manner provided therein, to such quantity of land as he may be entitled to under the same. All disputes as to title to any lands mentioned in this act shall be decided according to the rules governing the decision of disputes in ordinary cases under the pre-emption laws of the United States.

Approved, June 5, 1872.

Amended Act 2/11/74, 18 Stat. 15, infra this page. Act 6/22/74, 18 Stat. at p.173, post, p.89; Act 3/2/89, § 7, 25 Stat.871, post p.20.

[February 11, 1874, 18 Stat. 15]

CHAP. 25.—An act to amend the act entitled "An act to provide for the removal of the Flathead and other Indians from the Bitterroot Valley, in the Territory of Montana," approved June fifth, eighteen hundred and seventy-two.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the time of sale and payment of pre-empted lands in the Bitterroot Valley, in the Territory of Montana, is hereby extended for the period of two years from the expiration of the time allotted in the act entitled "An act to provide for the removal of the Flathead and other Indians

from the Bitterroot Valley, in the Territory of Montana," approved June fifth, eighteen hundred and seventy-two.

Sec. 2. That the benefit of the homestead act is hereby extended to all the settlers on said lands who may desire to take advantage of the same.

Approved, February 11, 1874

For Act 3/3/85, 23 Stat. 362, 363, 382, see p. 91, post, note 3.

[March 2, 1889, 25 Stat. 871]

CHAP. 391.--An act to provide for the sale of lands patented to certain members of the Flathead band of Indians in Montana Territory, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior, with the consent of the Indians severally, to whom patents have been issued for lands assigned to them in the Bitter Root Valley, in Montana Territory, under the provisions of an act of Congress approved June fifth, eighteen hundred and seventy-two, entitled, "An act to provide for the removal of the Flathead and other Indians from the Bitter Root Valley, in the Territory of Montana" or the heirs at law of such Indians, be, and he hereby is, authorized to cause to be appraised and sold, in tracts not exceeding one hundred and sixty acres, all the lands allotted and patented to said Indians; said lands shall be appraised as if in a state of nature, but the enhanced value thereof, by virtue of the settlement and improvement of the surrounding country, shall be considered in ascertaining their value: Provided, That the improvements thereon shall be appraised separate and distinct from land: Provided, further, That where any such patentee has died leaving no heirs, the lands and improvements of such deceased patentee shall be appraised and sold in like manner for the common benefit of the tribe to which said patentee belonged.

Sec. 2. That after the appraisement herein authorized shall have been completed, and after due notice, the Secretary of the Interior shall offer said lands for sale through the proper land-office, in tracts not exceeding one hundred and sixty acres, which shall be the limit of the amount any one person shall be allowed to purchase, except in cases, if any, where a tract contains a fractional excess over one hundred and sixty acres to the highest bidder: Provided, That no portion of said lands shall be sold at less than the appraised value thereof: Provided, That the said Secretary may dispose of the same on the following terms as to payment, that is to say, one-third of the price of any tract of land sold under the provisions of this act to be paid by the purchaser on the day of sale, one third in one year, and one-third in two years from said date, with interest on the deferred

payments at the rate of five per centum per annum; but in case of default in either of said payments, or the interest thereon, the person so defaulting for a period of sixty days shall forfeit absolutely the right to the tract which he has purchased, with any payment or payments he may have made; and the land thus forfeited shall again be sold as in the first instance: Provided further, That before the second or any subsequent payment shall be received, the purchaser shall prove to the satisfaction of the land office that he is actually residing upon the tract of land so purchased, and that he is entitled under the laws of United States to the benefit of the homestead laws.

Sec. 3. That the net proceeds derived from the sale of the lands herein authorized shall be placed in the Treasury to the credit of the Indians severally entitled thereto, and the Secretary of the Interior is hereby authorized to pay the same in cash to original allotters and patentees, or the heirs at law of such, or expend the same for their benefit in such manner as he may deem for their best interest.

Sec. 4. That when a purchaser shall have made full payment for a tract of land, as herein provided, and for the improvements thereon, patent shall be issued as in case of public lands under the homestead and preemption laws.

Sec. 5. That for the purpose of carrying out the provisions of this act there be, and hereby is, appropriated, out of any money in the Treasury not otherwise appropriated, the sum of five hundred dollars, or so much thereof as may be necessary, which sum shall be reimbursed pro rata out of the proceeds of the sale of the lands herein authorized.

Sec. 6. That in the event of the sale of the lands herein authorized it shall be the duty of the Secretary of the Interior to remove the Indians whose lands shall have been sold to the general reservation, known as the Jocko Reservation, in the Territory of Montana.

Sec. 7. That all acts and parts of acts in conflict herewith are hereby repealed.

Approved, March 2, 1889.

Amended Act 7/1/98, 30 Stat. at p.596, post, p.93; Act 6/5/00, 31 Stat. at p.270, post, p.23.

[March 3, 1891, 26 Stat. 1091]

CHAP. 556.—An act granting to the Missoula and Northern Railroad Company the right of way through the Flathead Indian Reservation, in the State of Montana.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the right of way is hereby granted, as hereinafter set forth, to the Missoula and Northern Railroad Company, a corporation organized and existing under the laws of the State of Montana, for the construction, operation, and maintenance of its railroad through the lands set apart for the use of the Flathead Indians, commonly known as the Flathead Indian Reservation, said railroad line beginning at a point at or near the mouth of Jocko River, on the Northern Pacific Railroad, in the county of Missoula, State of Montana, and running thence by the most practicable route to the northern line of said State of Montana, and more particularly described, as far as extending through said Indian reservation, as beginning at or near the aforesaid mouth of Jocko River, and running thence in a northerly direction to the southerly end of Flathead Lake, and thence by the most practicable route, either to the east or west of said lake, in a northerly direction to the said northern boundary of Montana.

Sec. 2. That the right of way hereby granted to said railroad company shall be seventy-five feet in width on each side of the central line of said railroad as aforesaid, and said company shall also have the right to take from lands adjacent to the line of said road material, stone, earth, and timber necessary for the construction thereof; also ground adjacent to said right of way for station buildings, depots, machine shops, side tracks, turn-outs, and water stations, not to exceed in amount three hundred feet in width and three thousand feet in length for each station, to the extent of one station for each ten miles of said road.

Sec. 3. That it shall be the duty of the Secretary of the Interior to agree with the Flathead and Confederated tribes on the compensation to be paid them for such right of way, and the time and manner for the payment thereof, but no right of way of any kind shall vest in said railroad company in or to any part of the right of way or station grounds herein provided for until plats thereof, made upon actual survey for the definite location of such road, and including the points for station buildings, depots, machine shops, side tracks, turn-outs, and water stations, shall be filed with and approved by the Secretary of the Interior, which approval shall be made in writing and be open for the inspection of any party interested therein, and until the compensation agreed on has been paid; and the surveys, construction, and operation of such railroad shall be conducted with due regard for the rights of the Indians and in accordance with such rules and regulations as the Secretary of the Interior may make to carry out the provisions of this act: Provided, That the right of way herein granted shall be lost and forfeited by said company unless

the road is constructed and in running order through said reservation within three years from the passage of this act: Provided further, That when said railroad shall have been constructed to the south end of said Flathead Lake said company may establish a temporary terminal station on the shore of said lake, on grounds not exceeding three thousand feet square, and, pending completion of said railroad, may utilize the waters of said Flathead Lake for transportation purposes.

Sec. 4. That Congress may at any time amend, alter, or repeal this act.

Approved, March 3, 1891.

For Act 7/13/92, 27 Stat. 138-139, authorizing negotiations, see post, p. 92, note 5.

[June 10, 1896, 29 Stat. 321, 341]

CHAP. 398.--An Act Making appropriations for current and contingent expenses of the Indian Department and fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, eighteen hundred and ninety-seven, and for other purposes.

The Secretary of the Interior is hereby authorized to appoint a commission to consist of three persons, not more than two of whom shall be of the same political party, and not more than one of whom shall be resident of any one State, to negotiate with the following Indians, namely: With the Crow and Flathead Indians in the State of Montana for the cession of portions of their respective reservations; with the Northern Cheyenne and Crow Indians for the removal of said Northern Cheyenne Indians from their present reservation on the Rosebud River at Lame Deer Agency to the southern portion of the Crow Reservation; with the Indians residing on the Fort Hall Indian Reservation in the State of Idaho, and with the Indians residing upon the Uintah Reservation in the State of Utah, for the surrender of any portion of their respective reservations, or for such modification of existing treaties as may be deemed desirable by said Indians and the Secretary of the Interior; and with the Yakima Indians in the State of Washington for the surrender of a portion of their reservation lands, and for such modification of existing treaties as may be deemed desirable by said Indians and the Secretary of the Interior, any agreement thus negotiated being subject to subsequent ratification by Congress; and for the expenses of such commission and

negotiations hereunder the sum of ten thousand dollars is appropriated: Provided, That the time for the completion of the canal, or any part thereof, authorized by an Act entitled "An Act granting to the Columbia Irrigation Company a right of way through the Yakima Indian Reservation, in Washington," be, and is hereby, extended two years from July twenty-fourth, eighteen hundred and ninety-six.

For Act July 1, 1898, 30 Stat. 571, 596, reappraisal of unsold tracts, see p. 93, post, note 6.

[June 5, 1900, 31 Stat. 267, 270]

CHAP. 716.--An Act For the relief of the Colorado Cooperative Colony; to permit second homesteads in certain cases, and for other purposes.

* * *

SEC. 3. That any person who prior to the passage of this Act, has made entry under the homestead laws, but from any cause has lost or forfeited the same shall be entitled to the benefits of the homestead laws as though such former entry had not been made: Provided, That persons who purchased land under and in accordance with the terms of an Act entitled "An Act to provide for the sale of lands patented to certain members of the Flathead band of Indians in the Territory of Montana, and for other purposes," approved March second, eighteen hundred and eighty-nine, shall not be held to have impaired or exhausted their homestead rights by or on account of any such purchase.

Approved, June 5, 1900.

[April 23, 1904, 33 Stat. 302]

CHAP. 1495.--An Act For the survey and allotment of lands now embraced within the limits of the Flathead Indian Reservation, in the State of Montana, and the sale and disposal of all surplus lands after allotment.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be and he is hereby, directed to immediately cause to be surveyed all of the Flathead Indian Reservation, situated within the State of Montana, the same being particularly described and set forth in article two of a certain treaty entered into by and between Isaac H. Stevens, governor and superintendent of Indian affairs for the Territory of Washington, on the part of the United States, and the chiefs, headmen, and delegates of the confederated tribes of the Flathead, Kootenai, and Upper Pend d'Oreille Indians, on the sixteenth day of July, eighteen hundred and fifty-five.

Sec. 2. That so soon as all of the lands embraced within said Flathead Indian Reservation shall have been surveyed, the Commissioner of Indian Affairs shall cause allotments of the same to be made to all persons having tribal rights with said confederated tribes of Flatheads, Kootenais, Upper Pend d'Oreille, and such other Indians and persons holding tribal relations as may rightfully belong on said Flathead Indian Reservation, including the Lower Pend d'Oreille or Kalispel Indians now on the reservation, under the provisions of the allotment laws of the United States.

Sec. 3. That upon the final completion of said allotments to said Indians, the President of the United States shall appoint a commission consisting of five persons to inspect, appraise, and value all of the said lands that shall not have been allotted in severalty to said Indians, the said persons so constituting said commission to be as follows: Two of said connissioners so named by the President shall be two persons now holding tribal relations with said Indians--the same may be designated to the President by the chiefs and headmen of said confederated tribes of Indians, two of said commissioners shall be resident citizens of the State of Montana, and one of said commissioners shall be a United States special Indian agent or Indian inspector of the Interior Department.

Sec. 4. That within thirty days after their appointment said commission shall meet at some point within the boundaries of said Flathead Indian Reservation and organize by the election of one of their number as chairman. Said commission is hereby empowered to select a clerk at a salary not to exceed seven dollars per day.

Sec. 5. That said commissioners shall then proceed to personally inspect and classify and appraise, by the smallest legal subdivisions of forty acres each, all of the remaining lands embraced within said reservation. In making such classification and appraisement said lands shall be divided into the following clases: First, agricultural land of the first class; second, agricultural land of the second class; third, timber lands, the same to be lands more valuable for their timber than for any other purpose; fourth, mineral lands; and fifth, grazing lands. [Further classification Act 6/25/10, 36 Stat. at p.863, post pp. 39-40.]

Sec. 6. That said commission shall in their report of lands of the third class determine as nearly as possible the amount of standing saw timber on legal subdivisions thereof and fix a minimum price for the value thereof, and in determining the amount of merchantable timber growing thereon they shall be empowered to employ a timber cruiser, at a salary of not more than eight dollars per day while so actually employed, with such assistants as may be necessary, at a salary not to exceed six dollars per day while so actually employed. Mineral lands shall not be appraised as to value.

Sec. 7. That said commissioners, excepting said special agent and inspector of the Interior Department, shall be paid a salary of not to exceed ten dollars per day each while actually employed in the inspection and classification of said lands; such inspection and classification to be fully completed within one year from date of the organization of said commission.

Sec. 8. That when said commission shall have completed the classification and appraisement of all of said lands and the same shall have been approved by the Secretary of the Interior, the land shall be disposed of under the general provisions of the homestead, mineral, and town-site laws of the United States, except such of said lands as shall have been classified as timber lands, and excepting sections sixteen and thirty-six of each township, which are hereby granted to the State of Montana for school purposes. And in case either of said sections or parts thereof is lost to the said State of Montana by reason of allotments thereof to any Indian or Indians now holding the same, or otherwise, the governor of said State, with the approval of the Secretary of the Interior, is hereby authorized, in the tract under consideration, to locate other lands not occupied, not exceeding two sections in any one township, and such selections shall be made prior to the opening of such lands to settlement: Provided, That the United States shall pay to said Indians for the lands in said sections sixteen and thirty-six, or the lands selected in lieu thereof, the sum of one dollar and twenty-five cents per acre.

Sec. 9. That said lands shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the time when and the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to settle upon, occupy, or enter any of said lands, except as prescribed in such proclamation: Provided, That the rights of honorably discharged Union soldiers and sailors of the late civil and Spanish wars, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes, as amended by the act of March first, nineteen hundred and one, shall not be abridged: Provided further, That the price of said lands shall be the appraised value thereof, as fixed by the said commission, but settlers under the homestead law who shall reside upon and cultivate the land entered in good faith for the period required by existing law shall pay one-third of the appraised value in cash at the time of entry, and the remainder in five equal annual installments to be paid one, two, three, four, and five years, respectively, from and after the date of entry, and shall be entitled to a patent for the lands so entered upon the payment to the local land officers of said five annual payments, and in addition thereto the same fees and commissions at the time of commutation or final entry as now provided by law where the

price of the land is one dollar and twenty-five cents per acre, and no other and further charge of any kind whatsoever shall be required of such settler to entitle him to a patent for the land covered by his entry: Provided, That if any entryman fails to make such payments, or any of them, within the time stated, all rights in and to the land covered by his or her entry shall at once cease, and any payments theretofore made shall be forfeited, and the entry shall be forfeited and canceled: And provided, That nothing in this act shall prevent homestead settlers from commuting their entries under section twenty-three hundred and one, Revised Statutes, by paying for the land entered the price fixed by said commission, receiving credit for payments previously made. [Amended Act of 5/29/1908, 35 Stat. at p.448, p.33 post; Act 5/18/16, 39 Stat. at p.139, post p.48.*]

Sec. 10. That only mineral entry may be made on such of said lands as said commission shall designate and classify as mineral under the general provisions of the mining laws of the United States, and mineral entry may also be made on any of said lands whether designated by said commission as mineral lands or otherwise, such classification by said commission being only prima facie evidence of the mineral or nonmineral character of the same: Provided, That no such mineral locations shall be permitted upon any lands alloted in severalty to an Indian.

Sec. 11. That all of said lands returned and classified by said commission as timber lands shall be sold and disposed of by the Secretary of the Interior under sealed bids to the highest bidder for cash or at public auction, as the Secretary of the Interior may determine, under such rules and regulations as he may prescribe. [Rewritten by Act of 3/3/09, 35 Stat. at p.795, post p.37.]

Sec. 12. That the President may reserve and except from said lands not to exceed nine hundred and sixty acres for Catholic mission schools, church, and hospital and such other eleemosynary institutions as may now be maintained by the Catholic Church on said reservation, which lands are hereby granted to those religious organizations of the Catholic Church now occupying the same, known as the Society of Jesus, the Sisters of Charity of Providence, and the Ursuline Nuns, and said lands to be granted in the following amounts, namely, to the Society of Jesus, six hundred and forty acres, to the Sisters of Charity of Providence, one hundred and sixty acres, and to the Ursuline Nuns, one hundred and sixty acres, such lands to be reserved and granted for the uses indicated only so long as the same are maintained and occupied by said organizations for the purposes indicated. The President is also authorized to reserve lands upon the same conditions and for similar purposes for any other missionary or religious societies that may make applications therefor within one year after the passage of this Act, in such quantity as he may deem proper. The President may also reserve such of said lands as may be convenient or necessary for the occupation and maintenance of any and all agency buildings, substations, mills, and other governmental



* See also Act 4/30/08, 35 Stat. at pp.83-84, post, p.95; Act 3/3/09, 35 Stat. at p.795, post p.95; Act 8/24/12, 37 Stat. at p.526, post p.96.

institutions now in use on said reservation or which may be used or occupied by the Government of the United States. [Amended and rewritten Act 3/3/05, 33 Stat. at p.1080, post p.28.]

Sec. 13. That all of said lands classified as agricultural lands of the first class and agricultural lands of the second class and grazing lands that shall be opened to settlement under this Act remaining undisposed of at the expiration of five years from the taking effect of this Act shall be sold and disposed of to the highest bidder for cash, under rules and regulations to be prescribed by the Secretary of the Interior, at not less than their appraised value, and in tracts not to exceed six hundred and forty acres to any one person.

Sec. 14. That the proceeds received from the sale of said lands in conformity with this Act shall be paid into the Treasury of the United States, and after deducting the expenses of the commission, of classification and sale of lands, and such other incidental expenses as shall have been necessarily incurred, and expenses of the survey of the lands, shall be expended or paid, as follows: One-half shall be expended from time to time by the Secretary of the Interior as he may deem advisable for the benefit of the said Indians and such persons having tribal rights on the reservation, including the Lower Pend d'Oreille or Kalispel thereon at the time that this Act shall take effect, in the construction of irrigation ditches, the purchase of stock cattle, farming implements, or other necessary articles to aid the Indians in farming and stock raising, and in the education and civilization of said Indians, and the remaining half to be paid to the said Indians and such persons having tribal rights on the reservation, including the Lower Pend d'Oreille or Kalispel thereon at the date of the proclamation provided for in section nine hereof, or expended on their account, as they may elect. [Amended and rewritten Act 5/29/08, 35 Stat.448, post p.35. Proceeds, see amendments noted § 9 ante.]

Sec. 15. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of one hundred thousand dollars, or so much thereof as may be necessary, to pay for the lands granted to the State of Montana and for lands reserved for agency, school, and mission purposes, as provided in sections eight and twelve of this Act, at the rate of one dollar and twenty-five cents per acre; also the sum of seventy-five thousand dollars, or so much thereof as may be necessary, the same to be reimbursable out of the funds arising from the sale of said lands to enable the Secretary of the Interior to survey the lands of said reservation as provided in section one of this Act.

Sec. 16. That nothing in this Act contained shall in any manner bind the United States to purchase any portion of the land herein described, except sections sixteen and thirty-six, or the equivalent, in each township, and the reserved tracts mentioned in section twelve, or to dispose of said land except as provided herein, or to guarantee to find purchasers for said lands or any portion thereof, it being the intention of this Act that the United States shall act as trustee for said Indians to dispose of said lands and to expend and pay over the proceeds received from the sale thereof only as received. [Amended by addition of §§17-20, Act of 6/21/06, 34 Stat. at p.354, p.30 post. Addition of §§ 21-22, Act 3/3/09, 35 Stat.795, Approved, April 23, 1904. post p.36. Addition of §§ 23-25, Act 4/12/10, 36 Stat.296, post p.38. Addition of Sec. 26, Act 2/28/19, 40 Stat.1203.]

ch 3, 1905, 33 Stat. 1048, 1080]

CHAP. 1479—An Act Making appropriations for the current contingent expenses of the Indian Department and for fulfilling aty stipulations with various Indian tribes for the fiscal year ing June thirtieth, nineteen hundred and six, and for other pur- es.

* * * *

Sec. 9. That section twelve, chapter fourteen hundred and ety-five, Statutes of the United States of America, entitled, Act for the survey and allotment of lands now embraced within the its of the Flathead Indian Reservation, in the State of Montana, the sale and disposal of all surplus lands after allotment," be, the same is hereby, amended so as to read as follows:

"Sec. 12. That the President may reserve and except from id lands, not to exceed one thousand two hundred and eighty acres, Catholic mission schools, church, and hospital and such other emosynary institutions as may now be maintained by the Catholic rch on said reservation, which lands are hereby granted to those ligious organizations of the Catholic Church now occupying the same, own as the Society of Jesus, the Sisters of Charity of Providence, d the Ursuline Nuns, the said lands to be granted in the following ounts, namely: To the Society of Jesus, six hundred and forty res; to the Sisters of Charity of Providence, three hundred and enty acres, and to the Ursuline Nuns, three hundred and twenty res, such lands to be reserved and granted for the uses indicated ly so long as the same are maintained, used, and occupied by said ganizations for the purposes indicated, except that forty acres of e six hundred and forty acres hereinbefore mentioned as granted to e Society of Jesus are hereby granted in fee simple to said Society Jesus, its successors and assigns: And be it further provided, at the President shall further reserve and except from said lands r the use of the University of Montana for biological station rposes one hundred and sixty acres, which land is hereby granted the State of Montana for the use of the University of Montana. e governor of said State, with the approval of the Secretary of the terior, is hereby authorized to locate said last-mentioned lands.

"The President is also authorized to reserve lands upon the me conditions and for similar purposes for any other missionary or ligious societies that may make application therefor within one ar after the passage of this Act in such quantity as he may deem oper. The President may also reserve such of said lands as may be nvenient or necessary for the occupation and maintenance of any and l agency buildings, substations, mills, and other governmental

institutions now in use on said reservation, or which may be used or occupied by the Government of the United States."

The President is also hereby authorized to reserve not to exceed five thousand acres of timber lands for the use of said Indians as a fuel supply, under such restrictions and regulations as may be prescribed by the Secretary of the Interior.

[May 31, 1906, 34 Stat. 205]

CHAP 2567.—An Act Making appropriations to supply additional urgent deficiencies in appropriations for the fiscal year nineteen hundred and six, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is hereby authorized and directed to transfer to the credit of the appropriation "Fees of witnesses, United States courts, nineteen hundred and six," sixty thousand dollars of the unexpended balance of the appropriation "Fees of witnesses, United States courts, nineteen hundred and five," and to the credit of the appropriation "Fees of jurors, United States courts, nineteen hundred and six," thirty thousand dollars of the unexpended balance of the appropriation "Fees of jurors, United States courts, nineteen hundred and five."

To meet the expenses of opening to entry and settlement during the fiscal years nineteen hundred and six and nineteen hundred and seven the ceded lands of the Flathead Indian Reservation in the State of Montana, under Act of April twenty-third, nineteen hundred and four; the Crow Indian Reservation in the State of Montana, under Act of April twenty-seventh, nineteen hundred and four; the Yakima Indian Reservation in the State of Washington, under Act of December twenty-first, nineteen hundred and four; the Shoshone Indian Reservation in the State of Wyoming, under Act of March third, nineteen hundred and five, and such other Indian reservations that may be open to entry and settlement during the fiscal year nineteen hundred and seven, the sum of twenty-five thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any money in the Treasury not otherwise appropriated, to continue available during the fiscal year nineteen hundred and seven: Provided, That the expenses pertaining to the opening of each of said reservations and paid for out of this appropriation shall be reimbursed to the United States from the money received from the sale of the lands embraced in said reservations, respectively: Provided further, That clerks detailed to assist in the opening of said reservations, while on such duty, shall be allowed per diem, in lieu of subsistence, at a rate not exceeding three dollars per day each, and actual necessary expenses for trans-

portation, including necessary sleeping-car fares.

Approved, May 31, 1906.

[June 21, 1906, 34 Stat. 325, 354]

CHAP. 3504.—An Act Making appropriations for the current and contingent expenses of the Indian Department, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and seven.

* * * *

FLATHEAD RESERVATION

That the Act of April twenty-third, nineteen hundred and four (Thirty-third Statutes at Large, page three hundred and two), entitled "An Act for the survey and allotment of lands now embraced within the limits of the Flathead Indian Reservation, in the State of Montana, and the sale and disposal of all surplus lands after allotment," as amended by section nine of the Act of March third, nineteen hundred and five (Thirty-third Statutes at Large, page one thousand and forty-eight), be amended by adding the following sections:

"Sec. 17. That the Secretary of the Interior is hereby authorized and directed to reserve and set aside for town-site purposes, and to survey, lay out, and plat into town lots, streets, alleys, and parks not less than forty acres of said land at or near each of the present settlements of Arlee, Dayton, Ravalli, Dixon, and Ronan, and not less than eighty acres at the present settlements of Saint Ignatius and Polson, and at such other places as the Secretary of the Interior may deem necessary or convenient for town sites, in such manner as will best subserve the present needs and the reasonable prospective growth of said settlements.

"Such town sites shall be surveyed, appraised, and disposed of as provided in section twenty-three hundred and eighty-one of the United States Revised Statutes: Provided, That any person who, at the date when the appraisers commence their work upon the land, shall be an actual resident upon any one such lot and the owner of substantial and permanent improvements thereon, and who shall maintain his or her residence and improvements on such lot to the date of his or her application to enter, shall be entitled to enter, at any time prior to the day fixed for thepublic sale and at the appraised value thereof, such lot and any one additional lot of which he or she may also be in possession and upon which he or she may have substantial

and permanent improvements: Provided further, That before making entry of any such lot or lots the applicant shall make proof, to the satisfaction of the register and receiver of the land district in which the land lies, of such residence, possession, and ownership of improvements, under such regulations as to time, notice, manner, and character of proof as may be prescribed by the Commissioner of the General Land Office, with the approval of the Secretary of the Interior: Provided further, That in making their appraisal of the lots so surveyed, it shall be the duty of the appraisers to ascertain the names of the residents upon and occupants of any such lots, the character and extent of the improvements thereon, and the name of the reputed owner thereof, and to report their findings in connection with their report of appraisal, which report of findings shall be taken as prima facie evidence of the facts therein set out. All such lots not so entered prior to the day fixed for the public sale shall be offered at public outcry in their regular order, with the other unimproved and unoccupied lots. That no lot shall be sold for less than ten dollars: And provided further, That said lots, when surveyed, shall approximate fifty by one hundred and fifty feet in size.

"Sec. 18. That the Secretary of the Interior is hereby authorized and directed to reserve and set aside one hundred and sixty acres of land at and surrounding the present hot springs, situated on said reservation near the settlement of Camas.

"That said hot springs and the said one hundred and sixty acres of land last mentioned shall be under the control and direction of the Secretary of the Interior, under such rules and regulations as he may prescribe, but any and all moneys that shall be derived from such use shall be for the benefit of the persons holding tribal relations with said tribes of Indians, the same to be disbursed as provided in section thirteen of this Act.

"Sec. 19. That nothing in this Act shall be construed to deprive any of said Indians, or said persons or corporations to whom the use of land is granted by the Act, of the use of water appropriated and used by them for the necessary irrigation of their lands or for domestic use or any ditches, dams, flumes, reservoirs constructed and used by them in the appropriation and use of said water.

"Sec. 20. That there is hereby appropriated, for the survey, appraisement, and sale of said town sites, out of any money in the Treasury not otherwise appropriated, the sum of fifteen thousand dollars, or so much thereof as may be necessary, the same to be reimbursable out of the funds arising from the sale of said lands:

Provided, That the persons employed or detailed under this appropriation shall be allowed therefrom while on duty a per diem in lieu of subsistence, at a rate to be fixed by the Secretary of the Interior, not exceeding three dollars per day each, and actual necessary expenses for transportation, including necessary sleeping-car fares."

For Act 3/1/07, 34 Stat. 1015, 1034, appraisal of lands, see p. 95, post, note 7; for Act 4/30/08, 35 Stat. 70, 83-4, irrigation plans, see p. 95, post, note 8.

[May 28, 1908, 35 Stat. 251, 267]

CHAP. 192.--An Act Making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, nineteen hundred and nine.

* * *

NATIONAL BISON RANGE: The President is hereby directed to reserve and except from the unallotted lands now embraced within the Flathead Indian Reservation, in the State of Montana, not to exceed twelve thousand eight hundred acres of said lands, near the confluence of the Pend d'Oreille and Jocko rivers, for a permanent national bison range for the herd of bison to be presented by the American Bison Society. And there is hereby appropriated the sum of thirty thousand dollars, or so much thereof as may be necessary, to enable the Secretary of the Interior to pay the confederated tribes of the Flathead, Kootenai, and Upper Pend d'Oreille, and such other Indians and persons holding tribal relations or may rightfully belong on said Flathead Indian Reservation, the appraised value of said lands as shall be fixed and determined under the provisions of the Act of Congress approved April twenty-third, nineteen hundred and four, entitled "An Act for the survey and allotment of lands now embraced within the limits of the Flathead Indian Reservation, in the State of Montana, and the sale and disposal of all surplus lands after allotment." And the Secretary of Agriculture is hereby authorized and directed to inclose said lands with a good and substantial fence and to erect thereon the necessary sheds and buildings for the proper care and maintenance of the said bison; and there is hereby appropriated therefor the sum of ten thousand dollars or so much thereof as may be necessary; in all, forty thousand dollars.

[May 29, 1908, 35 Stat. 444, 448]

CHAP. 216.--An Act To authorize the Secretary of the Interior to issue patents in fee to purchasers of Indian lands under any law now existing or hereafter enacted, and for other purposes.

* * * *

Sec. 15. That section nine, chapter fourteen hundred and ninety-five, Statutes of the United States of America, entitled "An Act for the survey and allotment of lands now embraced within the limits of the Flathead Indian Reservation, in the State of Montana, and the sale and disposal of all surplus lands after allotment," be, and the same is hereby, amended to read as follows:

"Sec. 9. That said lands shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the time when and the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to settle upon, occupy, or enter any of said lands, except as prescribed in such proclamation: Provided, That the rights of honorably discharged Union soldiers and sailors of the late civil and the Spanish wars, as defined and prescribed in section twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes, as amended by the Act of March first, nineteen hundred and one, shall not be abridged: Provided further, That the price of said lands shall be the appraised value thereof, as fixed by the said Commission, but settlers under the homestead law who shall reside upon and cultivate the land entered in good faith for the period required by existing law shall pay one-third of the appraised value in cash at the time of entry, and the remainder in five equal annual installments, to be paid one, two, three, four, and five years, respectively, from and after the date of entry, and shall be entitled to a patent for the lands so entered upon the payment to the local land officers of said five annual payments, and in addition thereto the same fees and commissions at the time of commutation or final entry as now provided by law where the price of the land is one dollar and twenty-five cents per acre, and no other and further charge of any kind whatsoever shall be required of such settler to entitle him to a patent for the land covered by his entry: Provided, That if any entryman fails to make such payments, or any of them, within the time stated, all rights in and to the land covered by his or her entry shall at once cease, and any payments theretofore made shall be forfeited, and the entry shall be forfeited and canceled: And provided, That nothing in this Act shall prevent homestead settlers from commuting their entries under section twenty-three hundred and one, Revised Statutes, by paying for the land entered the price fixed by said Commission, receiving credit for payments previously made: Provided, however, That the entryman or owner of any land irrigable by any system hereunder constructed under the provisions of section fourteen of this Act shall in addition to the payment required by section nine of said Act be required to pay for a water right the proportionate cost of the construction of said system in not more than fifteen

annual installments, as fixed by the Secretary of the Interior, the same to be paid at the local land office, and the register and receiver shall be allowed the usual commissions on all moneys paid.

"The entryman of lands to be irrigated by said system shall in addition to compliance with the homestead laws reclaim at least one-half of the total irrigable area of his entry for agricultural purposes, and before receiving patent for the lands covered by his entry shall pay the charges apportioned against such tract. No right to the use of water shall be disposed of for a tract exceeding one hundred and sixty acres to any one person, and the Secretary of the Interior may limit the areas to be entered at not less than forty nor more than one hundred and sixty acres each.

"A failure to make any two payments when due shall render the entry and water-right application subject to cancellation, with the forfeiture of all rights under this Act, as well as of any moneys paid thereon. The funds arising hereunder shall be paid into the Treasury of the United States and be added to the proceeds derived from the sale of the lands. No right to the use of water for lands in private ownership shall be sold to any landowner unless he be an actual bona fide resident on such land or occupant thereof residing in the neighborhood of such land, and no such right shall permanently attach until all payments therefor are made.

"All applicants for water rights under the systems constructed in pursuance of this Act shall be required to pay such annual charges for operation and maintenance as shall be fixed by the Secretary of the Interior, and the failure to pay such charges when due shall render the water-right application and the entry subject to cancellation, with the forfeiture of all rights under this Act as well as of any moneys already paid thereon.

"The Secretary of the Interior is hereby authorized to fix the time for the beginning of such payments and to provide such rules and regulations in regard thereto as he may deem proper. Upon the cancellation of any entry or water-right application, as herein provided, such lands or water rights may be disposed of under the terms of this Act and at such price and on such conditions as the Secretary of the Interior may determine, but not less than the cost originally fixed.

"The land irrigable under the systems herein provided, which has been alloted to Indians in severalty, shall be deemed to have a right to so much water as may be required to irrigate such lands without cost to the Indians for cnnstruction of such irrigation systems. The purchaser of any Indian allotment, purchased prior to the expiration of the trust period thereon, shall be exempt from any and all charge for construction of the irrigation system incurred up to the time of such purchase. All lands alloted to Indians shall

bear their pro rata share of the cost of the operation and maintenance of the system under which they lie.

"When the payments required by this Act have been made for the major part of the unallotted lands irrigable under any system and subject to charges for construction thereof, the management and operation of such irrigation works shall pass to the owners of the lands irrigated thereby, to be maintained at their expense under such form of organization and under such rules and regulations as may be acceptable to the Secretary of the Interior.

"The Secretary of the Interior is hereby authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this Act into full force and effect." [Limited Act 5/18/16, 39 Stat. at p.139, post p.46.]

That section fourteen of said Act be, and the same is hereby, amended to read as follows:

"Sec. 14. That the proceeds received from the sale of said lands in conformity with this Act shall be paid into the Treasury of the United States, and after deducting the expenses of the Commission, of classification and sale of lands, and such other incidental expenses as shall have been necessarily incurred, and expenses of the survey of the land, shall be expended or paid, as follows: So much thereof as the Secretary of the Interior may deem advisable in the construction of irrigation systems for the irrigation of the irrigable lands embraced within the limits of said reservation; one half of the money remaining after the construction of said irrigation systems to be expended by the Secretary of the Interior as he may deem advisable for the benefit of said Indians in the purchase of live stock, farming implements, or the necessary articles to aid said Indians in farming and stock raising and in the education and civilization of said Indians, and the remaining half of said money to be paid to said Indians and persons holding tribal rights on said reservation, semiannually as the same shall become available, share and share alike: Provided, That the Secretary of the Interior may withhold from any Indian a sufficient amount of his pro rata share to pay any charge assessed against land held in trust for him for operation and maintenance of irrigation system."

For Act of 3/3/09, 35 Stat. 781, 795, disposal of irrigable lands, see p. 95, post, note 9.

[March 3, 1909, 35 Stat. 781, 795]

CHAP. 263.--An Act Making appropriations for the current and contingent expenses of the Indian Department for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and ten.

* * *

For construction of irrigation systems to irrigate the allotted lands of the Indians of the Flathead Reservation in Montana and the unallotted irrigable lands to be disposed of under the Act of April twenty-third, nineteen hundred and four, entitled "An Act for the survey and allotment of lands now embraced within the limits of the Flathead Indian Reservation in the State of Montana, and the sale and disposal of all surplus lands after allotment," including the necessary surveys, plans, and estimates, two hundred and fifty thousand dollars, one hundred thousand dollars thereof to be immediately available, the cost of said entire work to be reimbursed from the proceeds of the sale of the lands and timber within said reservation.

That the Act of April twenty-third, nineteen hundred and four (Thirty-third Statutes at Large, page three hundred and two), entitled "An Act for the survey and allotment of lands now embraced within the limits of the Flathead Indian Reservation, in the State of Montana, and the sale and disposal of all surplus lands after allotment," as amended by the Act of June twenty-first, nineteen hundred and six, and the Act of May twenty-ninth, nineteen hundred and eight, be amended by adding thereto the following sections:

"Sec. 21. That the lands allotted, those retained or reserved, and the surplus lands sold or otherwise disposed of shall be subject for a period of twenty-five years to all the laws of the United States prohibiting the introduction of intoxicants into the Indian country, and that the Indian allottees, whether under the care of an Indian agent or not, shall for a like period be subject to all the laws of the United States prohibiting the sale or other disposition of intoxicants to Indians.

"Sec. 22. That the Secretary of the Interior be, and he is hereby, authorized, in his discretion, to reserve from location, entry, sale, or other appropriation all lands within said Flathead Indian Reservation chiefly valuable for power sites, or reservoir sites, and he shall report to Congress such reservations."

That section eleven of the Act of April twenty-third, nineteen hundred and four (Thirty-third Statutes at Large, page three hundred and two), entitled "An Act for the survey and allotment of lands now embraced within the limits of the Flathead Reservation, in the State of Montana, and the sale and disposal of all surplus lands after allotment," be amended to read as follows:

"Sec. 11. That all merchantable timber on said lands returned and classified by said commission as timber lands shall be sold and disposed of by the Secretary of the Interior, for cash, under sealed bids or at public auction, as the Secretary of the Interior may determine, and under such regulations as he may prescribe: Provided, That after the sale and removal of the timber such of said lands as are valuable for agricultural purposes shall be sold and disposed of by the Secretary of the Interior in such manner and under such regulations as he may prescribe."

[March 4, 1909, 35 Stat. 1039, 1051]

CHAP. 301.—An Act Making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, nineteen hundred and ten.

* * * *

For the maintenance of the Montana National Bison Range and other reservations for mammals and birds, seven thousand dollars; and so much of the forty thousand dollars heretofore appropriated for the Montana National Bison Range as remains unexpended is hereby reappropriated, the same to be immediately available, to be expended in fencing said lands, the erection thereon of the necessary sheds and buildings, and enlarging the limits heretofore established so as to make the total acreage not to exceed twenty thousand acres, and the President is hereby directed to reserve and except from the unallotted lands now embraced within the Flathead Indian Reservation, in the State of Montana, a sufficient area to enlarge said range as herein provided;

[April 12, 1910, 36 Stat. 296]

CHAP. 156.—An Act To amend the Act of April twenty-third, nineteen hundred and four (Thirty-third Statutes at Large, page three hundred and two), entitled "An Act for the survey and allotment of lands now embraced within the limits of the Flathead Indian Reservation, in the State of Montana, and the sale and disposal of all surplus lands after allotment," and all amendments thereto.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of April twenty-third, nineteen hundred and four (Thirty-third Statutes at Large, page three hundred and two), entitled "An Act for the survey

and allotment of lands now embraced within the limits of the Flathead Indian Reservation, in the State of Montana," and all amendments thereto, be amended by adding thereto the following sections:

"Sec. 23. That the Secretary of the Interior be, and he is hereby, authorized to cause to be surveyed and subdivided into lots of not less than two acres or more than five acres in area all of the unallotted lands fronting on Flathead Lake in the State of Montana, that are embraced within the limits of the Flathead Indian Reservation, whether classified as grazing, agricultural, or timber lands, and may sell same to the highest bidder at public sale subject to the right to reject any and all bids. The proceeds from the sale of said lands, after deducting the expense of the survey and sale thereof, shall be paid into the Treasury and expended as heretofore provided in section fourteen as amended by the Act of May twenty-ninth, nineteen hundred and eight.

"Sec. 24. That where allotments of lands have been made in severalty to said Indians from the lands embraced within the area of said Flathead Indian Reservation, which are or may be irrigable lands, the Secretary of the Interior may, upon application of the Indian allottee, sell and dispose of not to exceed sixty acres of such individual allotment of land under such terms and conditions of sale as the Secretary of the Interior may prescribe, one-half of the proceeds of the sale of said individual allotment to be paid to the Indian allottee and the remaining half of the proceeds of sale to be held in trust for the said Indian allottee, upon which he shall be paid annually not less than three per centum interest, the remaining principal sum to be paid to said allottee or his heirs when the full period of his trust patent for the remaining lands covered by his allotment shall have expired, or sooner, should the Secretary of the Interior, in his judgment, deem it best for said Indian allottee.

"Sec. 25. That the Secretary of the Interior is hereby authorized to set aside and reserve so much of the surplus unallotted and otherwise unreserved lands of the Flathead Indian Reservation as may be necessary to provide an allotment to each Indian having an allotment on any of the lands set aside and reserved for power or reservoir sites, as authorized by section twenty-two of the Act of March third, nineteen hundred and nine (Thirty-fifth Statutes at Large, page seven hundred and ninety-six), who may relinquish his allotment within such power or reservoir sites.

"And in the event of the failure, neglect, or refusal of any such allottee to relinquish any allotment made to him on any land reserved or necessary for reservoir sites, as aforesaid, the Secretary of the Interior is authorized to bring action under the provision of the laws of the State of Montana to condemn and acquire

title to any and all lands necessary or useful for said reservoir sites that have heretofore been allotted on said Flathead Indian Reservation lands."

Approved, April 12, 1910.

[June 23, 1910, 36 Stat. 592] [Extended to Flathead Irr. Project Act 7/17/14, 38 Stat.510, post pp.43-44.]

CHAP. 357.—An Act Providing that entrymen for homesteads within reclamation projects may assign their entries upon satisfactory proof of residence, improvement, and cultivation for five years, the same as though said entry had been made under the original homestead Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the filing with the Commissioner of the General Land Office of satisfactory proof of residence, improvement, and cultivation for the five years required by law, persons who have, or shall make, homestead entries within reclamation projects under the provisions of the Act of June seventeenth, nineteen hundred and two,* may assign such entries, or any part thereof, to other persons, and such assignees, upon submitting proof of the reclamation of the lands and upon payment of the charges apportioned against the same as provided in the said Act of June seventeenth, nineteen hundred and two, may receive from the United States a patent for the lands: Provided, That all assignments made under the provisions of this act shall be subject to the limitations, charges, terms and conditions of the reclamation Act. [* Established the Reclamation Fund.]

Approved, June 23, 1910.

[June 25, 1910, 36 Stat. 855, 863]

CHAP. 431.—An Act To provide for determining the heirs of deceased Indians, for the disposition and sale of allotments of deceased Indians for the leasing of allotments, and for other purposes.

* * * *

Sec. 29. That the Secretary of the Interior be, and he is hereby, authorized to classify and appraise, under such rules and regulations as he may prescribe, all of the vacant, unallotted, and unreserved lands of the Flathead Indian Reservation, in the

state of Montana, which have not been classified and appraised as provided for by the Act of Congress approved April twenty-third, nineteen hundred and four, entitled "An Act for the survey and allotment of lands now embraced within the limits of the Flathead Reservation, in the State of Montana, and the sale and disposal of all surplus lands after allotment," and the classification and appraisement made hereunder shall be of the same effect as provided for in said Act; and the said Secretary is hereby authorized to dispose of all lands classified as "barren," "burned over," and "containing small timber," under such rules and regulations as he may prescribe, at not less than their appraised value.

[March 3, 1911, 36 Stat. 1058, 1066]

CHAP. 210.—An Act Making appropriations for the current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and twelve.

* * * *

In the issuance of patents for all tracts of land bordering upon Flathead Lake, Montana, it shall be incorporated in the patent that "this conveyance is subject to an easement of one hundred linear feet back from a contour of elevation nine feet above the high-water mark of the year nineteen hundred and nine of Flathead Lake, to remain in the Government for purposes connected with the development of water power." [Amended Act 8/24/12, 37 Stat. at p.27, post p.43.]

[June 6, 1912, 37 Stat. 125]

CHAP. 155. —An Act Authorizing the Secretary of the Interior to classify and appraise unallotted Indian lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized to cause to be classified or reclassified and appraised or reappraised, in such manner as he may deem advisable, the unallotted or otherwise unreserved lands within any Indian reservation opened to settlement and entry but not classified and appraised in the manner provided for in the Act or Acts opening such reservations to settlement and entry, or where the existing classification or appraisement is, in the opinion of the Secretary of the Interior, erroneous.

Approved, June 6, 1912.

[August 9, 1912, 37 Stat. 265] [Extended to Flathead Irr. Project, Act 7/17/14, 38 Stat.510, post pp.43-44.]

CHAP. 278.—An Act Providing for patents on reclamation entries, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any homestead entryman under the Act of June seventeenth, nineteen hundred and two, known as the reclamation Act, including entrymen on ceded Indian lands, may, at any time after having complied with the provisions of law applicable to such lands as to residence, reclamation and cultivation, submit proof of such residence, reclamation and cultivation, which proof, if found regular and satisfactory, shall entitle the entryman to a patent, and all purchasers of water-right certificates on reclamation projects shall be entitled to a final water-right certificate upon proof of the cultivation and reclamation of the land to which the certificate applies, to the extent required by the reclamation Act for homestead entrymen: Provided, That no such patent or certificate shall issue until all sums due the United States on account of such land or water right at the time of issuance of patent or certificate have been paid.

Sec. 2. That every patent and water-right certificate issued under this Act shall expressly reserve to the United States a prior lien on the land patented or for which water right is certified, together with all water rights appurtenant or belonging thereto, superior to all other liens, claims or demands whatsoever for the payment of all sums due or to become due to the United States or its successors in control of the irrigation project in connection with such lands and water rights.

Upon default of payment of any amount so due title to the land shall pass to the United States free of all encumbrance, subject to the right of the defaulting debtor or any mortgagee, lien holder, judgment debtor, or subsequent purchaser to redeem the land within one year after the notice of such default shall have been given by payment of all moneys due, with eight per centum interest and cost. And the United States, at its option, acting through the Secretary of the Interior, may cause land to be sold at any time after such failure to redeem, and from the proceeds of the sale there shall be paid into the reclamation fund all moneys due, with interest as herein provided, and costs. The balance of the proceeds, if any, shall be the property of the defaulting debtor or his assignee: Provided, That in case of sale after failure to redeem under this section the United States shall be authorized to bid in such land at not more than the amount in default, including interest and costs.

Sec. 3. That upon full and final payment being made of all amounts due on account of the building and betterment charges to the United States or its successors in control of the project, the United States or its successors, as the case may be, shall issue upon request a certificate certifying that payment of the building and betterment charges in full has been made and that the lien upon the land has been so far satisfied and is no longer of any force or effect except the lien for annual charges for operation and maintenance: Provided, That no person shall at any one time or in any manner, except as hereinafter otherwise provided, acquire, own, or hold irrigable land for which entry or water right application shall have been made under the said reclamation Act of June seventeenth, nineteen hundred and two, and Acts supplementary thereto and amendatory thereof, before final payment in full of all instalments of building and betterment charges shall have been made on account of such land in excess of one farm unit as fixed by the Secretary of the Interior as the limit of area per entry of public land or per single ownership of private land for which a water right may be purchased respectively, nor in any case in excess of one hundred and sixty acres, nor shall water be furnished under said Acts nor a water right sold or recognized for such excess; but any such excess land acquired at any time in good faith by descent, by will, or by foreclosure of any lien may be held for two years and no longer after its acquisition; and every excess holding prohibited as aforesaid shall be forfeited to the United States by proceedings instituted by the Attorney General for that purpose in any court of competent jurisdiction; and this proviso shall be recited in every patent and water-right certificate issued by the United States under the provisions of this Act.

Sec. 4. That the Secretary of the Interior is hereby authorized to designate such bonded fiscal agents or officers of the Reclamation Service as he may deem advisable on each reclamation project, to whom shall be paid all sums due on reclamation entries or water rights, and the officials so designated shall keep a record for the information of the public of the sums paid and the amount due at any time on account of any entry made or water right purchased under the reclamation Act; and the Secretary of the Interior shall make provision for furnishing copies of duly authenticated records of entries upon payment of reasonable fees, which copies shall be admissible in evidence, as are copies authenticated under section eight hundred and eighty-eight of the Revised Statutes.

Sec. 5. That jurisdiction of suits by the United States for the enforcement of the provisions of this Act is hereby conferred on the United States district courts of the districts in which the lands are situated.

Approved, August 9, 1912.

[August 24, 1912, 37 Stat. 518, 526, 527]

CHAP. 388.—An Act Making appropriations for the current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and thirteen.

* * *

There is hereby appropriated the sum of forty thousand dollars, to remain available until expended, and the Secretary of the Interior is hereby authorized and empowered to use said money, or so much thereof as may be necessary, in the erection of buildings for agency purposes on the Flathead Indian Reservation in Montana; for the purchase of lands therein for an agency site not to exceed eighty acres if such is deemed by the Secretary of the Interior to be necessary for the proper location of such agency; for the expenses of the removal of the agency to the new site selected; and for the protection and repair of any other buildings required for the efficient conduct of the affairs of the Flathead Indians in Montana: Provided, that the entire sum expended hereunder for the purposes herein mentioned shall be reimbursed the United States from the proceeds arising from the sale of lands and timber within the Flathead Indian Reservation.

* * *

That so much of the Act of Congress approved March third, nineteen hundred and eleven (Thirty-sixth Statutes at Large, page one thousand and sixty-six), which provides for the reservation of an easement over tracts of land bordering Flathead Lake, Montana, be, and the same hereby is, amended to read as follows: "That an easement in, to, and over all lands bordering on or adjacent to Flathead Lake, Montana, which lie below an elevation of nine feet above the high-water mark of said lake for the year nineteen hundred and nine, is hereby reserved for uses and purposes connected with storage for irrigation or development of water power, and all patents hereafter issued for any such lands shall recite such reservation."

[July 17, 1914, 38 Stat. 510]

CHAP. 143.—An Act To extend the provisions of the Act of June twenty-third, nineteen hundred and ten (Thirty-sixth Statutes at Large, page five hundred and ninety-two), authorizing assignment of reclamation homestead entries, and of the Act of August ninth, nineteen hundred and twelve (Thirty-seventh Statutes at Large, page two hundred and sixty-five), authorizing the issuance of patents on reclamation homestead entries, to lands in the Flathead irrigation project, Montana.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the Act of June twenty-third, nineteen hundred and ten (Thirty-sixth Statutes at Large, page five hundred and ninety-two), authorizing the assignment under certain conditions of homesteads within reclamation projects, and of the Act of August ninth, nineteen hundred and twelve (Thirty-seventh Statutes at Large, page two hundred and sixty-five), authorizing under certain conditions the issuance of patents on reclamation entries, and for other purposes, be, and the same are hereby, extended and made applicable to lands within the Flathead irrigation project, in the former Flathead Indian Reservation, Montana, but such lands shall otherwise be subject to the provisions of the Act of Congress approved April twenty-third, nineteen hundred and four (Thirty-third Statutes at Large, page three hundred and two), as amended by the Act of Congress approved May twenty-ninth, nineteen hundred and eight (Thirty-fifth Statutes at Large, page four hundred and forty-eight): Provided, That the lien reserved to the United States on the land patented, as provided for in section two of said Act of August ninth, nineteen hundred and twelve, shall include all sums due or to become due to the United States on account of the Indian price of such lands.

Approved, July 17, 1914.

[August 1, 1914, 38 Stat. 582]

Chap. 222.—An Act Making appropriations for the current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and fifteen.

* * *

For the construction, repair, and maintenance of ditches, reservoirs, and dams, purchase and use of irrigation tools and appliances, water rights, ditches, lands necessary for canals, pipe lines, and reservoirs for Indian reservations and allotments, and for drainage and protection of irrigable lands from damage by floods, or loss of water rights, including expenses of necessary surveys and investigations to determine the feasibility and estimated cost of new projects and power and reservoir sites on Indian reservations in accordance with the provisions of section thirteen of the Act of June twenty-fifth, nineteen hundred and ten, $335,000, to remain available until expended: Provided, That no part of this appropriation shall be expended on any irrigation system or reclamation project for which specific appropriation is made in this Act or for which public funds are or may be available under any other Act of Congress; for pay of one chief inspector of irrigation, who shall be a skilled irrigation engineer, $4,000; one assistant inspector of irrigation, who shall be

a skilled irrigation engineer, $2,500; for traveling and incidental expenses of two inspectors of irrigation, including sleeping-car fare and a per diem of $3 in lieu of subsistence when actually employed on duty in the field and away from designated headquarters, $4,200; in all, $345,700: Provided also, That not to exceed seven superintendents of irrigation, six of whom shall be skilled irrigation engineers and one competent to pass upon water rights, and one field-cost accountant, may be employed: Provided further, That the proceeds of sales of material utilized for temporary work and structures shall be covered into the appropriation made therefor and be available for the purpose of the appropriation; and for lands irrigable under any such system or project the Secretary of the Interior may fix maintenance charges which shall be paid as he may direct, such payments to be available for use in maintaining the project or system for which collected: Provided further, That all moneys expended heretofore or hereafter under this provision shall be reimbursable where the Indians have adequate funds to repay the Government, such reimbursements to be made under such rules and regulations as the Secretary of the Interior may prescribe: Provided further, That the Secretary of the Interior is hereby authorized and directed to apportion the cost of any irrigation project constructed for Indians and made reimbursable out of tribal funds of said Indians in accordance with the benefits received by each individual Indian so far as practicable from said irrigation project, said cost to be apportioned against such individual Indian under such rules, regulations, and conditions as the Secretary of the Interior may prescribe, and annually thereafter the Secretary of the Interior shall transmit to Congress a cost account in detail of all moneys, from whatever source derived, expended on each such irrigation project for the preceding fiscal year, including a resume of previous expenditures, which shall show the number of Indians on the reservation where the land is irrigated, irrigable area under ditch, irrigable area under project (approximate), irrigable area cultivated by Indians, irrigable area cultivated by lessees, amount expended on construction to June thirtieth of the preceding fiscal year, amount necessary to complete, and cost per acre when completed (estimated); value of land when irrigated, and such other detailed information as may be requisite for a thorough understanding of the conditions on each system or project: Provided further, That in addition to what is herein required there shall be submitted to Congress on the first Monday in December, nineteen hundred and fourteen, as to the Uintah, Shoshone, Flathead, Blackfeet, and Fort Peck Reclamation projects, a report showing the status of the water rights of the Indians and the method of financing said projects, together with such other information as the Secretary of the Interior may deem necessary for a full and complete understanding of all the facts and conditions in connection therewith.

[March 4, 1915, 38 Stat. 1188, 1189]

CHAP. 161.--An Act To authorize the laying out and opening of public roads on the Winnebago, Omaha, Ponca, and Santee Sioux Indian Reservations in Nebraska and on Indian Reservations in Montana.

* * *

SEC. 2. That the legal authorities charged with the duty of laying out and opening public roads and highways under the laws of the State of Montana, having jurisdiction over any territory embraced within any Indian reservation in Montana, are hereby authorized and empowered to lay out and open public roads within any of the said Indian reservations in conformity to and in accordance with the laws of the State of Montana relating to the laying out and opening of public roads, and that any public road when so laid out and opened shall be deemed a legal road: Provided, That such road authorities shall, in addition to notifying the landowners as provided in the State laws, likewise serve notice upon the superintendent in charge of the restricted Indian lands upon which it is proposed to lay out a public road, and shall also furnish him with a map drawn on tracing linen showing the definite location and width of such proposed road, and no such road shall be laid out until after it has received the approval of such superintendent.

Approved, March 4, 1915.

[May 18, 1916, 39 Stat. 123, 139]

CHAP. 125.—An Act Making appropriations for the current and contingent expenses of the Bureau of Indians Affairs, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and seventeen.

* * *

For the purchase of a strip of land containing sixteen acres, more or less, laying between the Flathead River and the Flathead Indian Agency reserve, Montana, for an addition to said reserve, $320, and said amount shall be reimbursed to the United States from the proceeds arising from the sale of lands and timber within the Flathead Indian Reservation.

That lands on the Flathead Indian Reservation in Montana valuable for agricultural or horticultural purposes, heretofore classified as timber lands, may, in the discretion of the Secretary of the Interior, be appraised and opened to homestead entry under regulations prescribed by him, upon condition that homestead entrymen shall at the time of making their original homestead entries pay the full value of the timber found on the land at the time that the appraisement of the land itself is made, such payment to be in addition to the appraised price of the lands apart from the timber.

For continuing construction of the irrigation systems on the Flathead Indian Reservation, in Montana, $750,000 (reimbursable), which shall be immediately available and remain available until expended: Provided, That the payments for the proportionate cost of the construction of said systems required of settlers on the surplus unallotted land by section nine, chapter fourteen hundred ninety-five, Statutes of the United States of America, entitled "An Act for the survey and allotment of lands now embraced within the limits of the Flathead Indian Reservation in the State of Montana, and the sale and disposal of all surplus lands after allotment," as amended by section fifteen of the Act of May twenty-ninth, nineteen hundred and eight (Thirty-fifth Statutes at Large, page four hundred and forty-eight), shall be made as herein provided: Provided further, That nothing contained in the Act of May twenty-ninth, nineteen hundred and eight (Thirty-fifth Statutes at Large, page four hundred and forty-four), shall be construed to exempt the purchaser of any Indian allotment purchased prior to the expiration of the trust period thereon from any charge for construction of the irrigation system incurred up to the time of such purchase, except such charges as shall have accrued and become due in accordance with

the public notices herein provided for, or to relieve the owners of any or all land allotted to Indians in severalty from payment of the charges herein required to be made against said land on account of construction of the irrigation systems; and in carrying out the provisions of said section the exemption therein authorized from charges incurred against allotments purchased prior to the expiration of the trust period thereon shall be the amount of the charges or installments thereof due under public notice herein provided for up to the time of such purchase.

* * *

The work to be done with the amounts herein appropriated for the completion of the Blackfeet, Flathead, and Fort Peck projects may be done by the Reclamation Service on plans and estimates furnished by that service and approved by the Commissioner of Indian Affairs: Provided, That not to exceed $15,000 of applicable appropriations made for the Flathead, Blackfeet, and Fort Peck irrigation projects shall be available for the maintenance, repair, and operation of motor-propelled and horse-drawn passenger-carrying vehicles for official use upon the aforesaid irrigation projects: Provided further, That not to exceed $7,500 may be used for the purchase of horse-drawn passenger-carrying vehicles, and that not to exceed $1,500 may be used for the purchase of motor-propelled passenger-carrying vehicles.

That the Secretary of the Interior be, and he is hereby, authorized and directed to announce, at such time as in his opinion seems proper, the charge for construction of irrigation systems on the Blackfeet, Flathead, and Fort Peck Indian Reservation in Montana, which shall be made against each acre of land irrigable by the systems on each of said reservations. Such charges shall be assessed against the land irrigable by the systems on each said reservation in the proportion of the total construction cost which each acre of such land bears to the whole area of irrigable land thereunder.

On the first day of December after the announcement by the Secretary of the Interior of the construction charge the allottee, entryman, purchaser, or owner of such irrigable land which might have been furnished water for irrigation during the whole of the preceding irrigation season, from ditches actually constructed, shall pay to the superintendent of the reservation where the land is located, for deposit to the credit of the United States as a reimbursement of the appropriations made or to be made for construction of said irrigation systems, five per centum of the construction charge fixed for his land, as an initial installment, and shall pay the balance of the charge in fifteen annual installments, the first five of which shall each be five per centum of the construction charge and the

remainder shall each be seven per centum of the construction charge. The first of the annual installments shall become due and payable on December first of the fifth calendar year after the initial installment: Provided, That any allottee, entryman, purchaser, or owner may, if he so elects, pay the whole or any part of the construction charges within any shorter period: Provided further, That the Secretary of the Interior may, in his discretion, grant such extension of the time for payments herein required from Indian allottees or their heirs as he may determine proper and necessary, so long as such land remains in Indian title.

That the tribal funds heretofore covered into the Treasury of the United States in partial reimbursement of appropriations made for constructing irrigation systems on said reservations shall be placed to the credit of the tribe and be available for such expenditure for the benefit of the tribe as Congress may hereafter direct.

The cost of constructing the irrigation systems to irrigate allotted lands of the Indians on these reservations shall be reimbursed to the United States as hereinbefore provided, and no further reimbursements from the tribal funds shall be made on account of said irrigation works except that all charges against Indian allottees or their heirs herein authorized, unless otherwise paid, may be paid from the individual shares in the tribal funds, when the same is available for distribution, in the discretion of the Secretary of the Interior.

That in addition to the construction charges every allottee, entryman, purchaser, or owner shall pay to the superintendent of the reservation a maintenance and operation charge based upon the total cost of maintenance and operation of the systems on the several reservations, and the Secretary of the Interior is hereby authorized to fix such maintenance and operation charge upon such basis as shall be equitable to the owners of the irrigable land. Such charges when collected shall be available for expenditure in the maintenance and operation of the systems on the reservation where collected: Provided, That delivery of water to any tract of land may be refused on account of nonpayment of any charges herein authorized, and the same may, in the discretion of the Secretary of the Interior, be collected by a suit for money owed: Provided further, That the rights of the United States heretofore acquired, to water for Indian lands referred to in the foregoing provision, namely, the Blackfeet, Fort Peck, and Flathead Reservation land, shall be continued in full force and effect until the Indian title to such land is extinguished.

That the Secretary of the Interior be, and he is hereby, authorized to prescribe such rules and regulations and issue such

notices as may be necessary to carry into effect the provisions of this Act, and he is hereby authorized and directed to determine the area of land on each reservation which may be irrigated from constructed ditches and to determine what allowance, if any, shall be made for ditches constructed by individuals for the diversion and distribution of a partial or total water supply for allotted or surplus unallotted land: Provided, That if water be available prior to the announcement of the charge herein authorized, the Secretary of the Interior may furnish water to land under the systems on the said reservations, making a reasonable charge therefor, and such charges when collected may be used for construction or maintenance of the systems through which such water shall have been furnished.

[June 27, 1918, 40 Stat. 616]

CHAP. 106.—An Act To authorize the Secretary of the Interior to issue a deed to G. H. Beckwith for certain land within the Flathead Indian Reservation, Montana.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is hereby authorized to convey by deed, at the appraised price, to G. H. Beckwith, two certain tracts of land in the Flathead Indian Reservation and town of Saint Ignatius, Montana, lying in the southeast quarter of the southeast quarter of section fourteen, township eighteen north, range twenty west, Montana principal meridian, separated by a public highway sixty feet wide, and described as follows: The point of beginning "A" of the first tract is south eighty-nine degrees and forty-six minutes west four hundred and sixty-three and one-tenth feet from the 1/128 corner found in place on the east line of said section fourteen and north eighty-nine degrees and forty-six minutes east thirty-three feet from a 1/128 corner, which in turn is north no degrees and twenty-two minutes west eight hundred and twenty-six and seven-tenths feet from a 1/128 corner found in place on the south line of said section fourteen. Thence from point of beginning "A" north no degrees and twenty-two minutes west fifteen and eight-tenths feet to "B," thence north fifty-six degrees and thirty-seven minutes west three hundred and seventy-seven and six-tenths feet to "K," thence south no degrees and twenty-two minutes east four hundred and sixty-two and eight-tenths feet to "L," thence north eighty-nine degrees and thirty-five minutes east three hundred and fourteen and three-tenth feet to "Z," thence north no degrees and twenty-two minutes west two hundred and thirty-seven and two-tenths feet to the point of beginning, "A," and containing two and fifty-eight one-hundredths acres. The point of

beginning "C" of the second tract is north no degrees and twenty-two minutes west eighty-eight feet from the point of beginning "A" of the first tract, thence north fifty-six degrees and thirty-seven minutes west two hundred and ninety-eight feet to "D," thence north thirty-one degrees and ten minutes west one hundred and thirty feet to "F," thence north fifty-eight degrees and fifty minutes east ninety-six feet to "H," thence south forty-five degrees and thirty-three minutes east one hundred and fifteen feet to "J," thence south sixty-five degrees and six minutes east two hundred and sixty-four and two-tenths feet to "E," thence south thirty-three degrees and twenty-three minutes west one hundred and sixty feet to the point of beginning "C," and containing one and twenty one-hundredths acres: Provided, That the land in said tracts shall at no time be used for the sale of intoxicating liquors, and should it be so used, the title to the same shall revert to the Government of the United States and all payments made thereon shall be forfeited: Provided further, That whatever business is conducted on this tract shall be under Government supervision as at present, and shall continue under such supervision so long as the United States Government retains control over the Flathead Indians at this point.

Approved, June 27, 1918.

[January 7, 1919, 40 Stat. 1053]

CHAP. 5.—An Act To authorize the sale of certain lands to school district numbered twenty-eight, of Missoula County, Montana.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized, in his discretion, to sell and convey to school district numbered twenty-eight, of Missoula County, Montana, the southwest quarter of the southwest quarter of the southeast quarter of section thirty-six, township twenty-one north, range twenty west, on the Flathead Indian Reservation, in Montana, or so much thereof as may be required, for public school purposes, under such terms and regulations as he may prescribe, at not less than its appraised value; and the net proceeds from the sale of said land shall be deposited in the Treasury of the United States to the credit of the Flathead Indians, to draw interest at the rate now provided by law, and to be used for the benefit of the Indians on the Flathead Indian Reservation: Provided, That the patent therefor shall contain the condition that Indian children, residing in the said school district numbered twenty-

right, shall at all times be admitted to the privilege of attendance and instruction on equality with white children.

Approved, January 7, 1919.

[February 28, 1919, 40 Stat. 1203]

CHAP. 71.--An Act To provide for stock-watering privileges on certain unallotted lands on the Flathead Indian Reservation, Montana.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of April twenty-third, nineteen hundred and four (Thirty-third Statutes at Large, page three hundred and two), entitled "An Act for the survey and allotment of lands now embraced within the limits of the Flathead Indian Reservation, in the State of Montana," and all amendments thereto, be amended by adding thereto the following section:

"Sec. 26. That the Secretary of the Interior be, and he hereby is, authorized and directed to designate as valuable for stock-watering purposes such of the unallotted and unreserved lands of the Flathead Indian Reservation, which border on streams, as may be subject to settlement and disposal under sections nine and thirteen of this Act. Lands so designated shall be disposed of under the terms of this Act, subject to the condition, which shall be expressed in all patents issued for lands so designated, that existing trails crossing said land shall be kept open to the extent necessary to provide access for live stock to streams adjacent to said lands. The Secretary of the Interior is authorized and directed to perform all acts necessary to the enforcement of this condition."

Approved, February 28, 1919.

For Act 2/14/20, 41 Stat. 408, lieu selection Montana State lands, see p. 98, post, note 17.

[February 25, 1920, 41 Stat. 452]

CHAP. 87.--An Act for the relief of certain members of the Flathead Nation of Indians, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That during the

period of one year from and after the approval of this Act the Secretary of the Interior is hereby authorized, under existing law and under such rules and regulations as he may prescribe, to make allotments on the Flathead Reservation, Montana, to all unallotted, living children enrolled with the tribe, enrolled or entitled to enrollment: Provided, That such allotments be made from any unallotted or unsold lands within the original limits of the Flathead Indian Reservation, including the area now classified and reserved as timber lands, cut-over lands, burned or barren lands thereon; and patents issued for allotments hereunder for any lands from which such timber has not been cut and marketed, shall contain a clause reserving to the United States the right to cut and market, for tribal benefit, as now authorized by law, the merchantable timber on the lands so allotted: Provided further, That when the merchantable timber has been cut from any lands allotted hereunder, the title to such timber as remains on such lands will thereupon pass to the respective allottees, and the Secretary of the Interior is hereby directed to withhold from sale or entry all lands unsold and unentered within the said reservation at the date of the passage of this Act until allotments hereunder have been completed: Provided further, That not exceeding forty acres of each allotment made under the provisions of this Act shall be designated as a homestead which shall be inalienable and nontaxable during the minority of the allottee, and thereafter until such restrictions may be removed either by Congress or the Secretary of the Interior. [Amended 6/16/50, 64 Stat.229, post p.79.]

Approved, February 25, 1920.

For Act 3/3/21, 41 Stat. 1225, 1236, claims for sale of patented lands, see p. 98, post, note 18.

[March 13, 1924, 43 Stat. 21]

CHAP. 54.--An Act For the relief of certain nations or tribes of Indians in Montana, Idaho, and Washington.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That jurisdiction is hereby conferred upon the Court of Claims, with right of appeal to the Supreme Court of the United States, to consider and determine all legal and equitable claims against the United States of the Blackfeet, Blood, Piegan, and Gros Ventre Nations or Tribes of Indians, residing upon the Blackfeet and Fort Belknap Indian Reservations, in the State of Montana; and the Flathead, Kootenais, and Upper Pend d'Oreilles Nations or Tribes of Indians, residing upon the Flathead Indian Reservation, in the State of Montana; and the Nez Perce Nation or Tribe of Indians, residing upon the Lapwai Indian Reservation, in the State of Idaho; and upon the Colville Indian

eservation, in the State of Washington, for lands or hunting rights laimed to be existing in all said nations or tribes of Indians y virtue of the treaty of October 17, 1855 (Eleventh Statutes at arge, page 657, and the following), and in said Flathead, Kootenais nd Upper Pend d'Oreilles Nations or Tribes of Indians by virtue of he Treaty of July 16, 1855 (Twelfth Statutes at Large, page 975, nd the following), with said Indians, and all claims arising directly herefrom, which lands and hunting rights are alleged to have been aken from the said Indians by the United States, and also any egal or equitable defenses, set-offs, or counterclaims, including ratuities, which the United States may have against the said nations r tribes, and to enter judgment thereon, all claims and defenses to e considered without regard to lapse of time; and the final judgment nd satisfaction thereof shall be in full settlement of all said laims.

That suits under this Act shall be begun by the filing of a etition within two years of the date of the approval of this Act, to e verified by the attorney or attorneys selected by the claimant ndians, with the approval of the Secretary of the Interior, employed nder contracts executed and approved in accordance with existing aw. The claimant Indians shall be parties plaintiff and the United tates shall be party defendant, and such suits shall on motion of ither party be advanced on the docket of the Court of Claims and of he Supreme Court of the United States. The compensation to be paid he attorneys for the claimant Indians shall be determined by the ourt of Claims in accordance with terms of the said approved con- racts and shall be paid out of any sum or sums found and adjudged o be due said Indians: But in no event shall said compensation xceed 10 per centum of the amount of the respective judgments, nor xceed $25,000 for the Indians residing on each respective reser- ation: Provided, however, That said compensation shall not exceed 25,000 for the Nez Perce Nation or Tribe of Indians residing on oth the Lapwai and Colville Indian Reservations, nor exceed 10 er centum of the amount of any judgments rendered in favor of said ez Perce Nation or Tribe, said compensation to be exclusive of all ctual and necessary expenses in prosecuting said suits. The balance f any such judgments shall be placed in the Treasury of the United tates to the credit of the Indians entitled thereto and draw interest t the rate of 4 per centum per annum.

Approved, March 13, 1924.

ay 31, 1924, 43 Stat. 246]

CHAP. 215.—An Act To provide for the addition of the names f certain persons to the final roll of the Indians of the Flathead dian Reservation, Montana.

Memo letter to Blake re Acct Item 7-1462



Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby authorized to add to the final roll of the Indians of the (Jocko) Flathead Indian Reservation, Montana, approved January 22, 1920, under the Act of May 25, 1918 (Fortieth Statutes, page 591), and the Act of June 30, 1919 (Forty-first Statutes, page 9), the names of the following persons, descendants of the Confederated Flathead Tribes of Indians: Lucy Contesto, Mary Sophie Contesto, Clifford Gendron, Adolph Squeque, Peter Joseph Chalwain, Dennis McLeod, Margaret Louise Ashley, Veona Carlson, Lois May Houle, Norbert Marage, Eva Matilda Matt, Eneas Isadore Woodcock, Wilton Sidney Worley, Harry Leon Beauchaine, Henry Louzeau, and Louise Isaac.

The Secretary of the Interior is also authorized to pay to each of the persons named a sum equal to that heretofore paid per capita to those whose names were on the approved roll, such payments to be made from any tribal funds in the Treasury to the Credit of the Flathead Indians.

Approved, May 31, 1924.

[May 10, 1926, 44 Stat. 453, 464]

CHAP. 277.—An Act Making appropriations for the Department of the Interior for the fiscal year ending June 30, 1927, and for other purposes.

FLATHEAD COUNTY LIBRARY
KALISPELL, MONTANA

* * * *

For continuing construction, maintenance, and operation of the irrigation systems on the Flathead Indian Reservation, in Montana, by and under the direction of the Commissioner of Indian Affairs, including the purchase of any necessary rights or property, $575,000: Provided, That of the total amount herein appropriated not to exceed $15,000 shall be available for operation and maintenance of the project, the balance to be available for the construction items hereinafter enumerated in not to exceed the following amounts: Pablo Feed Canal enlargement, $100,000; Moiese Canal enlargement, $15,000; South Side Jocko Canal, $40,000; Hubbart Feed Canal, $7,500; Camas A Canal, $2,500; Continuing construction of power plant, $395,000, of which sum $15,000 shall be immediately available for additional surveys and preparation of plans: Provided further, That no

part of this appropriation, except the $15,000 herein made immediately available, shall be expended on construction work until an appropriate repayment contract, in form approved by the Secretary of the Interior, shall have been properly executed by a district or districts organized under State law embracing the lands irrigable under the project, except trust patent Indian lands, which contract, among other things, shall require repayment of all construction costs heretofore or hereafter incurred on behalf of such lands, with provision that the total construction cost on the Camas Division in excess of the amount it would be if based on the per acre construction cost of the Mission Valley Division of the project, shall be held and treated as a deferred obligation to be liquidated as hereinafter provided. Such contract shall require that the net revenues derived from the operation of the power plant herein appropriated for shall be used to reimburse the United States in the following order: First, to liquidate the cost of the power development; second, to liquidate payment of the deferred obligation on the Camas Division; third, to liquidate construction cost on an equal per acre basis on each acre of irrigable land within the entire project; and fourth, to liquidate operation and maintenance costs within the entire project. Provision shall also be contained therein requiring payment of operation and maintenance charges annually in advance of each irrigation season and prohibit the granting of a water right to or the use of water by any individual for more than one hundred and sixty acres of land irrigable under constructed works within the project after the Secretary of the Interior shall have issued public notice in accordance with the Act of May 18, 1916 (Thirty-ninth Statutes at Large, pages 123-130); all lands, except lands owned by individual Indians, at the date of public notice in excess of one hundred and sixty acres not disposed of by bona fide sale within two years after said public notice shall be conveyed in fee to the United States free of encumbrance to again become a part of the public domain under contract between the United States and the individual owners at the appraised price fixed at the instance of the Secretary of the Interior, such amount to be credited in reduction of the construction charge against the land within the project retained by such owner. All lands so conveyed to the United States shall be subject to disposition by the Secretary of the Interior in farm units at the appraised price, to which shall be added such amount as may be necessary to cover any accruals against the land and other costs arising from conditions and requirements prescribed by said Secretary: Provided further, That trust patent Indian lands shall not be subject to the provisions of the law of any district created as herein provided for

but shall, upon the issuance of fee patent therefor, be accorded the same rights and privileges and be subject to the same obligations as other lands within such district or districts: Provided further, That all construction, operation, and maintenance costs, except such construction costs on the Camas Division held and treated as a deferred obligation herein provided for, on this project shall be, and are hereby, made a first lien against all lands within the project, which lien upon any particular farm unit shall be released by the Secretary of the Interior after the total amount charged against such unit shall have been paid, and a recital of such lien shall be made in any instrument issued prior to such release by the said Secretary. The contracts executed by such district or districts shall recognize and acknowledge the existence of such lien: Provided further, That pending the issuance of public notice the construction assessment shall be at the same rate heretofore fixed by the Secretary of the Interior, but upon issuance of public notice the assessment rate shall be 2 1/2 per centum per acre, payable annually, in addition to the net revenues derived from operations of the power plant as hereinbefore provided, of the total unpaid construction costs at the date of said public notice: Provided further, That the public notice above referred to shall be issued by the Secretary of the Interior upon completion of the construction of the power plant.

[January 12, 1927, 44 Stat. 934, 945]

CHAP. 27.—An Act Making appropriations for the Department of the Interior for the fiscal year ending June 30, 1928, and for other purposes.

* * *

Flathead irrigation project, Montana: For operation and maintenance, $25,000, to be immediately available: Provided, That of the unexpended balance of the appropriation for this project for the fiscal year 1927 there is hereby reappropriated and made available for the fiscal years 1927 and 1928, $40,000 for construction of the South Side Jocko Canal, available when the Jocko irrigation district shall properly execute an appropriate repayment contract, in form approved by the Secretary of the Interior, which contract shall, except as hereinafter provided, conform to the conditions provided for a contract in the appropriation for

this project for the fiscal year 1927: Provided further, That of said unexpended balance there is hereby reappropriated and made available for the fiscal years 1927 and 1928 not to exceed the following amounts: Pablo Feed Canal enlargement, $100,000; Moiese Canal enlargement, $15,000; Hubbart Feed Canal, $7,500; Camas A Canal, $2,500; available when the Flathead irrigation district shall properly execute an appropriate repayment contract, in form approved by the Secretary of the Interior, which contract shall, except as hereinafter provided, conform to the conditions provided for a contract in the appropriation for this project for the fiscal year 1927: And provided further, That the remainder of the unexpended balance of the appropriation for this project for the fiscal year 1927 shall at once become available, and remain available for the fiscal years 1927 and 1928, for continuing construction of power plant when an appropriate repayment contract, in form approved by the Secretary of the Interior, and which, except as hereinafter provided, contains the provisions set forth for such a contract in the appropriation for this project for the fiscal year 1927, shall have been executed by a district or districts organized under State law embracing not less than eighty thousand acres of the lands irrigable under the project: And provided further, Any contract provided for in this paragraph shall require that the net revenues derived from operation of the power plant shall be used to reimburse the United States in the following order: First, to liquidate the cost of the power development; second, to liquidate payment of the deferred obligation on the Camas Division; third, to liquidate construction cost on an equal per acre basis on each acre of irrigable land within the district or districts contracting; and fourth, to liquidate operation and maintenance costs within such district or districts. [Amended 3/7/28, 45 Stat.212, post p.58.]

[March 7, 1928, 45 Stat. 200, 212]

CHAP. 137.—An Act Making appropriations for the Department of the Interior for the fiscal year ending June 30, 1929, and for other purposes.

* * *

Flathead irrigation project, Montana: The unexpended balance of the appropriation for continuing construction of the irrigation systems on the Flathead Indian Reservation, Montana, contained in the Act of May 10, 1926 (Forty-fourth Statutes at Large, pages 464-466), as continued available

in the Act of January 12, 1927 (Forty-fourth Statutes at Large, page 945), shall remain available for the fiscal year 1929, subject to the conditions and provisions of said Acts: Provided, That the unexpended balance of the $395,000 available for continuation of construction of a power plant may be used, in the discretion of the Secretary of the Interior, for the construction and operation of a power distributing system and for purchase of power for said project but shall be available for that purpose only upon execution of an appropriate repayment contract as provided for in said Acts: Provided further, That the net revenues derived from the operation of such distributing system shall be used to reimburse the United States in the order provided for in said Acts: Provided further, That the Federal Power Commission is authorized in accordance with the Federal Water Power Act and upon terms satisfactory to the Secretary of the Interior, to issue a permit or permits or a license or licenses for the use, for the development of power, of power sites on the Flathead Reservation and of water rights reserved or appropriated for the irrigation projects: Provided further, That rentals from such licenses for use of Indian lands shall be paid the Indians of said reservation as a tribe, which money shall be deposited in the Treasury of the United States to the credit of said Indians, and shall draw interest at the rate of 4 per centum: Provided further, That the public notice provided for in the Act of January 12, 1927, shall be issued by the Secretary of the Interior upon the 1st day of November, 1930: Provided further, That in his discretion the Secretary of the Interior may provide in such repayment contracts for covering into construction costs the operation and maintenance charges for the irrigation season of 1928 and all undistributed operation and maintenance cost, and may extend the time for payment of operation and maintenance charges now due and unpaid for such period as in his judgment may be necessary, the charges now due so extended to bear interest payable annually at the rate of 6 per centum per annum until paid, and to contract for the payment of the construction charges now due and unpaid within such term of years as the Secretary may find to be necessary with interest payable annually at the rate of 6 per centum per annum until paid: Provided further, That not more than $35,000 of said reappropriated balance of $395,000 shall be immediately available for operation and maintenance, and $75,000 shall be available for construction of laterals near Ronan upon the execution of appropriate repayment contract as provided for in said Acts. [Amended Act 3/4/29, 45 Stat. at p.1639, post p.60]

[March 4, 1929, 45 Stat. 1562, 1574]

CHAP. 705.—An Act Making appropriations for the Department of the Interior for the fiscal year ending June 30, 1930, and for other purposes.

* * * *

The unexpended balance of the appropriation for continuing construction of the irrigation systems on the Flathead Indian Reservation, Montana, contained in the Act of May 10, 1926 (44 Stat., pp. 464-466), as continued available in the Act of January 12, 1927 (44 Stat., p. 945), and the Act of March 7, 1928 (45 Stat., p. 212), shall remain available for the fiscal year 1930, subject to the reimbursable and other conditions and provisions of said Acts: Provided, That not more than $10,000 of the unexpended balance of $395,000 made available by the Act of March 7, 1928 (45 Stat., p. 212), for the construction of a power distributing system and for purchase of power, or for construction of power plant, shall be available for operation and maintenance, and $40,000 shall be available for construction of laterals near Ronan.

[March 4, 1929, 45 Stat. 1623, 1639]

CHAP. 707.—An Act Making appropriations to supply deficiencies in certain appropriations for the fiscal year ending June 30, 1929, and prior fiscal years, to provide supplemental appropriations for the fiscal years ending June 30, 1929, and June 30, 1930, and for other purposes.

* * * *

Flathead irrigation project, Montana: Not exceeding $220,000 of the unexpended balance of the appropriation of $395,000 made available by the Interior Department appropriation Act for the fiscal year 1929 for the construction and operation of a power-distributing system and for purchase of power for said project, may be used, in the discretion of the Secretary of the Interior, during the fiscal years 1929 and 1930, for the purposes and in the amounts specified, as follows: $10,000, for betterment work on Camas A. Canal; $25,000, for lateral extensions and replacement of wooden structures in the Mission Valley; $45,000, for completion of the Dry Creek Canal; $40,000, for part enlargement of Taber

Reservoir; and $100,000, for part construction of Kicking-horse Reservoir, of which sum not to exceed $15,000 may be used for classification of land in the Flathead irrigation project: Provided, That any portion remaining under such unexpended balance (after the diversions hereinbefore made) and applicable during the fiscal years 1929 and 1930 to the construction of power transmission lines and the purchase of power shall be available if and when license for the development of power on the Flathead River shall have been issued by the Federal Power Commission as provided in the Act of March 7, 1928 (45 Stat., pp. 212, 213): Provided further, That the Secretary of the Interior, in lieu of collecting past-due and unpaid construction charges with interest as provided in the Act of March 7, 1928 (45 Stat., p. 213), shall, in determining the construction costs to be fixed in the public notice specified in said Act and in the repayment contract, include the amounts due on account of said past-due construction charges in the construction costs chargeable against the respective units or legal subdivisions upon which the same are now a lien: Provided further, That the Federal Power Commission in issuing any permits or licenses for the development of power or power sites on the Flathead Indian Reservation in the State of Montana, as authorized by the Act of March 7, 1928 (45 Stat., pp. 212, 213), is hereby authorized and directed to waive payment of the usual administrative fees or commissions charged under existing laws relating to or under regulations of said Federal Power Commission in the issuance of any such permits or licenses.

[May 14, 1930, 46 Stat. 279, 291]

CHAP. 273.—An Act Making appropriations for the Department of the Interior for the fiscal year ending June 30, 1931, and for other purposes.

For operation and maintenance of the irrigation systems on the Flathead Indian Reservation, Montana, $15,000; for continuation of construction, Camas A Betterment, $12,000; to complete construction Kicking Horse Reservoir, $100,000; Nine Pipe Feed Canal structures, $15,000; to complete Nine Pipe Reservoir, $5,000; Twin Reservoir, $30,000; lateral systems betterment, $25,000; miscellaneous engineering, surveys and examinations, $15,000; headquarters buildings, $15,000; for construction or purchase of a power distributing system or for construction of a power plant, $40,000; in all, $272,000: Provided, That the unexpended balance of the appropriations for continuing

construction of this project now available shall remain available for the fiscal years 1930 and 1931 for such construction or purchase of a power-distributing system or for construction of a power plant: Provided further, That in addition to the amounts herein appropriated for such construction or purchase of a power-distributing system or for construction of a power plant, the Secretary of the Interior may also enter into contracts for the same purposes not exceeding a total of $200,000, and his action in so doing shall be deemed a contractual obligation of the Federal Government for the payment of the cost thereof and appropriations hereafter made for such purposes shall be considered available for the purpose of discharging the obligation so created: Provided further, That the funds made available herein for continuation of construction shall be subject to the reimbursable and other conditions and provisions of said Acts: And provided further, That upon execution by the Jocko and Mission Districts of repayment contracts in pursuance to existing law, the operation and maintenance charges for those districts for the irrigation season of 1930 shall be covered into construction costs.

[ February 14, 1931, 46 Stat. 1115,1127]

CHAP. 187.—An Act Making appropriations for the Department of the Interior for the fiscal year ending June 30, 1932, and for other purposes.

* * * *

For operation and maintenance of the irrigation systems on the Flathead Indian Reservation, Montana, $18,000; for continuation of construction, Camas A betterment, $10,000; beginning construction of Lower Crow Reservoir, $90,000, together with the unexpended balance of the appropriation for completing the Kicking Horse Reservoir contained in the Interior Department Appropriation Act for the fiscal year 1931; beginning Pablo Reservoir enlargement, $85,000; lateral systems betterment, $25,000; miscellaneous engineering, surveys and examinations, $5,000; purchase of reservoir and camp sites, $55,000; for the construction or purchase of a power distributing system, $50,000; in all $338,000: Provided, That the unexpended balance of the appropriations for continuing construction of this project now available shall remain available for the fiscal year 1932 for such construction or purchase of a power-distributing system: Provided further, That in addition to the amounts herein appropriated for such construction or purchase of a power-distributing system, the Secretary of the Interior may also enter into contracts for the same purposes not exceeding a total of $200,000, and his action in so doing shall be deemed a contractual obligation of the Federal

Government for the payment of the cost thereof and appropriations hereafter made for such purposes shall be considered available for the purpose of discharging the obligation so created: Provided further, That the funds made available herein for continuation of construction shall be subject to the reimbursable and other conditions and provisions of said Acts: Provided further, That in any district in this project, which has or may hereafter execute a repayment contract in pursuance of existing law, the first payment of construction charges may in the discretion of the Secretary of the Interior be required in the calendar year 1935, but in any event the total repayment of such construction charges shall be required in not more than forty years from the date of public notice heretofore given: And provided further, That upon execution by the Jocko and Mission districts of repayment contracts in pursuance to existing law, the operation and maintenance charges for those districts for the irrigation season of 1931 shall be covered into construction costs.

[March 4, 1931, 46 Stat. 1552, 1567]

CHAP. 522.—An Act Making appropriations to supply deficiencies in certain appropriations for the fiscal year ending June 30, 1931, and prior fiscal years, to provide supplemental appropriations for the fiscal years ending June 30, 1931, and June 30, 1932, and for other purposes.

* * * *

Irrigation systems, Flathead Reservation, Montana (reimburseable): For an additional amount for the construction and/or purchase of a power distributing system for the use of the Flathead irrigation project, Montana, fiscal years, 1931 and 1932, $200,000 in lieu of the contract authorizations of $200,000 for this purpose contained in the Interior Department Appropriation Acts for the fiscal years 1931 and 1932.

[April 22, 1932, 47 Stat. 91, 101]

CHAP. 125.—AN ACT Making appropriations for the Department of the Interior for the fiscal year ending June 30, 1933, and for other purposes.

* * *

For operation and maintenance of the irrigation systems on the Flathead Indian Reservation, Montana, $12,000; for continuation of construction Camas A betterment, $2,000; completing cnnstruction of Lower Crow Reservoir $135,000, together with the unexpended balance of the appropriations for cnntinuing construction of the Flathead irrigation system contained in the Interior Department Appropriation Act for the fiscal year 1932; continuing Pablo Reservoir enlargement, $80,000; lateral systems betterment, $20,000; miscellaneous engineering, surveys, and examinations, $5,000; in all, $254,000: Provided, That the funds made available herein for continuation of construction shall be subject to the reimbursable and other conditions and provisions of said Acts: Provided further, That upon execution by the Jocko district of repayment contract in pursuance to existing law, the operation and maintenance charges for such district for the irrigation season of 1932 shall be covered into construction costs.

[February 17, 1933, 47 Stat. 820, 830]

CHAP. 98.—AN ACT Making appropriations for the Department of the Interior for the fiscal year ending June 30, 1934, and for other purposes.

* * *

For operation and maintenance of the irrigation systems on the Flathead Indian Reservation, Montana, $12,000; * * * Provided, That the unexpended balance of the appropriation of $55,000 contained in the Interior Department Appropriation Act, fiscal year 1932 (46 Stat., p. 1127), for purchase of sites for reservoirs, construction headquarters and administrative uses, is hereby made available for the same purpose until June 30, 1934: Provided further, That (with the consent of the irrigation districts on the Flathead irrigation project which have executed repayment cnntracts with the United States as required by law) the Secretary of the Interior may modify the terms of such contracts by requiring the operation and maintenance charges (not heretofore carried into construction costs and dealt with in the Act of March 7, 1928 (45 Stat., pp. 212-213) ) to be paid over the same period of years and in like manner as the construction costs are to be paid under the terms of the

public notice issued by such Secretary on November 1, 1930, as amended April 20, 1931: Provided further, that the first installment of such operation and maintenance charges shall be due and payable on the same date as the first installment of construction charges is due and payable, where modifications of the contracts are made pursuant hereto.

[May 9, 1935, 49 Stat. 176, 187]

CHAP. 101.—An Act Making appropriations for the Department of the Interior for the fiscal year ending June 30, 1936, and for other purposes.

* * *

For operation and maintenance of the irrigation systems on the Flathead Indian Reservation, Montana, $12,000, reimbursable, together with $110,000 from which amount expenditures shall not exceed the aggregate receipts covered into the Treasury in accordance with section 4 of the Permanent Appropriation Repeal Act, 1934: Provided, That (with the consent of the irrigation districts of the Flathead irrigation project which have executed repayment contracts with the United States as required by law) the Secretary of the Interior may modify the terms of such contracts by requiring the operation and maintenance charges (not heretofore carried into construction costs and which were dealt with in the Act of March 7, 1928 (45 Stat., pp. 212-213)), and those accruing subsequent to March 7, 1928, which were due and unpaid at the time of execution of repayment contract, to be paid over the same period of years and in like manner as the construction costs are to be paid under the terms of the public notice issued by such Secretary on November 1, 1930, as amended April 20, 1931: Provided, That no interest rate shall be charged from and after the date of the passage of this Act: Provided further, That the first installment of such operation and maintenance charges shall be due and payable on the same date as the first installment of construction charges is due or may be due and payable, where modifications of the contracts are made pursuant hereto: Provided further, That the first installment of construction costs shall be due and payable in December 1938 instead of the date now fixed: Provided further, That the operation and maintenance costs assessable against the Jocko Valley irrigation district for the calendar year of 1935 shall be carried into the construction costs and shall be payable as other construction costs.

[June 7, 1935, 49 Stat. 328]

CHAP. 191.--An Act to provide funds for cooperation with Joint School District Numbered 28, Lake and Missoula Counties, Montana, for extension of public-school buildings to be available to Indian children of the Flathead Indian Reservation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, the sum of $100,000 for the purpose of cooperating with Joint School District Numbered 28, Lake and Missoula Counties, Montana, for the extension and improvement of public-school buildings, namely, at Arlee in the sum of $40,000, at Roman in the sum of $30,000, and at St. Ignatius in the sum of $30,000: Provided, That the expenditure of any money so appropriated shall be subject to the condition that the schools maintained by said district shall be available to all Indian children of the Flathead Indian Reservation, Montana, on the same terms, except as payment of tuition, as other children of said school district: Provided further, That such expenditures shall be subject to such further conditions as may be prescribed by the Secretary of the Interior.

Approved, June 7, 1935.

[April 4, 1938, 52 Stat. 193]

CHAP. 63.--An Act To authorize the Secretary of the Interior to grant concessions on reservoir sites and other lands in connection with Federal Indian irrigation projects wholly or partly Indian, and to lease the lands in such reserves for agricultural, grazing, and other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized, in his discretion, to grant concessions on reservoir sites, reserves for canals or flowage areas, and other lands under his jurisdiction which have been withdrawn or otherwise acquired in connection with the San Carlos, Fort Hall, Flathead, and Duck Valley or Western Shoshone irrigation projects for the benefit in whole or in part of Indians, and to lease such lands for agricultural, grazing, or other purposes: Provided, That no lands so leased shall be eligible for benefit payments under the crop control program, or the

soil conservation act: Provided further, That such concessions may be granted or lands leased by the Secretary of the Interior under such rules, regulations, and laws as govern his administration of the public domain as far as applicable, for such considerations, monetary or otherwise, and for such periods of time as he may deem proper, the term of no concession to exceed a period of ten years: Provided further, That the funds derived from such concessions or leases, except funds so derived from Indian tribal property withdrawn for irrigation purposes and for which the tribe has not been compensated, shall be available for expenditure in accordance with the existing laws in the operation and maintenance of the irrigation projects with which they are connected. Any funds derived from reserves for which the tribe has not been compensated shall be deposited to the credit of the proper tribe: Provided further, That where tribal lands of any Indian tribe organized under section 16 of the Act of June 18, 1934 (48 Stat. 984), have been withdrawn or reserved for the purposes hereinbefore mentioned, such lands may be leased or concessions may be granted thereon only by the proper tribal authorities, upon such conditions and subject to such limitations as may be set forth in the constitution and bylaws or charter of the respective tribes.

Approved, April 4, 1938.

[August 5, 1939, 53 Stat. 1221]

CHAP. 483.—Joint Resolution To approve the action of the Secretary of the Interior deferring the collection of certain irrigation construction charges against lands under the San Carlos and Flathead Indian irrigation projects.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in accordance with the Act of June 22, 1936, the action of the Secretary of the Interior in deferring such charges under said irrigation projects is hereby approved.

Approved, August 5, 1939.

[June 24, 1946, 60 Stat. 302]

CHAP. 460.—An Act To provide for the disposition of tribal funds of the Confederated Salish and Kootenai Tribes of Indians of the Flathead Reservation in Montana.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding any other provision of existing law, the tribal funds now on deposit or hereafter placed to the credit of the Confederated Salish and Kootenai Tribes of Indians of the Flathead Reservation in Montana, in the United States Treasury, shall be available for such purposes as may be designated by the tribal council of said tribe and approved by the Secretary of the Interior: Provided, That any expenditures so designated and approved shall be in accordance with the provisions of the tribal constitution and charter.

Approved June 24, 1946.

[July 30, 1946, 60 Stat. 715]

CHAP. 701.—An Act Conferring jurisdiction upon the Court of Claims to hear, examine, adjudicate, and render judgment in any and all claims which the Confederated Salish and Kootenai Tribes of Indians of the Flathead Reservation in Montana, or any tribe or band thereof, may have against the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That jurisdiction is hereby conferred upon the Court of Claims, subject to review by the Supreme Court of the United States on writ of certiorari as in other cases, to hear, examine, adjudicate, and render judgment in any and all legal and equitable claims of whatsoever nature which the Confederated Salish and Kootenai Tribes of Indians of the Flathead Reservation of Montana, or any tribe or band thereof, may have against the United State.

Sec. 2. That suit or suits under this Act may be instituted by the Confederated Salish and Kootenai Tribes of Indians, or any tribe or band thereof, either separately or jointly, as party or parties plaintiff, against the United States as party defendant, by filing within five years after the approval of this Act a petition or petitions in the Court of Claims and serving with respect to each suit a copy thereof on the Attorney General of the United States, who, either in person or by some attorney from the Department of Justice to be designated by him, shall appear and defend the interests of the United States. Such petition or petitions shall set

forth the facts upon which the claim or claims for recovery is or are based and shall be verified by the attorney or attorneys employed by said Indians, under contract approved in accordance with existing law, to prosecute said claims, which may be made upon information and belief, and no other verification shall be necessary. The petition or petitions shall be subject to amendment at any time prior to final submission of the case to the Court of Claims. Such petition or petitions may, in addition to alleging specific claims, demand a general accounting of all funds and property expended or used by the United States for the account of said Indians, in which event the General Accounting Office shall within a reasonable time from date of filing said petition or petitions make a complete audit of said accounts, and, in addition to the usual copies furnished the Attorney General, shall furnish a copy thereof to the attorney or attorneys for said Indians; and the court, after full hearing, shall state the account and render judgment in accordance therewith.

Sec. 3. That at the trial of any suit instituted hereunder the court shall settle and determine the rights therein, both legal and equitable, of said Indians against the United States, notwithstanding lapse of time or statutes of limitation. In the determination of the validity of any claim asserted or defense interposed hereunder, the court shall have the full power and authority of a court of equity.

Sec. 4. That the court shall have authority, by proper orders and process, to make parties to any suit or suits instituted hereunder any other tribe, band, or group of Indians deemed by it necessary or proper to a final determination of the matters in controversy.

Sec. 5. That in any suit instituted hereunder any letter, paper, document, map, or record in the possession of any officer or department of the United States (or certified copies thereof) may be used in evidence, and the departments of the Government of the United States shall give full and free access to the attorney or attorneys for said Indians to such letters, papers, documents, maps, or records as may be useful to said attorney or attorneys in the preparation for trial or trials of such suit or suits.

Sec. 6. That no payment or payments which have been made by the United States upon any claim or claims asserted in any suit brought hereunder, or expended for any of the said Indians, shall operate as an estoppel against any suit brought hereunder, but there shall be set off against any recovery obtained by said Indians hereunder any payment made

by the United States on any claim asserted by said Indians, together with such gratuity expenditures as are directed to be set off by the Act of Congress, approved August 12, 1935 (49 Stat. 596): Provided, That no moneys expended for the benefit of said Indians under the Wheeler-Howard Act, approved June 18, 1934 (48 Stat. 984), shall be applicable as set-offs.

Sec. 7. That upon the final determination of any suit or suits instituted hereunder, the Court of Claims, in the event of judgment for said Indians shall determine such fees or compensation to be paid the attorney or attorneys as said court shall find reasonable or equitable, and in addition thereto such actual and necessary expenses as shall have been incurred by the attorney or attorneys in the prosecution of said claims. In no case shall the fees or compensation decreed by said Court of Claims be in excess of the amount stipulated in the contract or contracts approved by the Commissioner of Indian Affairs and the Secretary of the Interior, and in no event to exceed 10 per centum of the amount of the recovery, and shall be paid out of any money appropriated by Congress for the benefit of said Indians pursuant to any judgment hereunder.

Sec. 8. That the amount of any judgment recovered for said Indians, less attorneys' fees and expenses, shall be placed to the credit of said Indians in the Treasury of the United States and shall draw interest at the rate of 4 per centum per annum from date of judgment and shall thereafter be subject to appropriation by Congress and used for the benefit of said Indians, including, but without limitations, the purchase of lands, livestock, farming implements, erection of buildings and improvements, and for productive enterprises, with the approval of the Secretary of the Interior and the consent of said Indians.

Approved July 30, 1946.

[July 26, 1947, 61 Stat. 494]

Chap. 340.—An Act To authorize the Secretary of the Interior to defer the collection of certain irrigation construction charges against lands under the Flathead Indian irrigation project.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding any provisions of the Act entitled "An Act to authorize the Secretary of the Interior to investigate and adjust irrigation charges on irrigation lands within projects on Indian reservations, and for other purposes", approved

June 22, 1936 (49 Stat. 1803), the Secretary of the Interior is authorized and directed to defer the collection of irrigation construction charges on the Flathead Indian irrigation project until January 1, 1949.

Approved July 26, 1947.

[May 20, 1948, 62 Stat. 248]

CHAP. 325.—An Act To authorize the sale of certain individual Indian land on the Flathead Reservation to the State of Montana.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Clara Keenan Dumontier, a Flathead Indian, is hereby authorized to sell and convey to the State of Montana the following-described tract of land held by the United States in trust for her under the provisions of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), said conveyance to be made by an appropriate warranty deed approved by the Secretary of the Interior or his authorized representative: A tract of land in the north half of the southwest quarter, section 1, township 16 north, range 20 west, Montana principal meridian; more particularly described as follows: Beginning at the southwest corner of the said north half southwest corner, section 1, thence from the said point of beginning northerly along the west line of the said point of beginning northerly along the west line of the said section 1, two hundred and fourteen and five-tenths feet, to a point; thence south eighty degrees forty-eight minutes east one thousand three hundred and forty and five-tenths feet, to a point, on the south line of the said north half of the southwest quarter, section 1; thence westerly along the south line of the said north half of the southwest quarter, section 1, one thousand three hundred and twenty-three and three-tenths feet, to the said point of beginning, containing three and twenty-six hundredths acres, more or less.

Approved May 20, 1948.

[May 25, 1948, 62 Stat. 269]

An Act To provide for adjustment of irrigation charges on the Flathead Indian irrigation project, Montana, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the repayment to the United States of all reimbursable costs heretofore or hereafter incurred for the construction of the irrigation and power systems of the Flathead Indian irrigation project in Montana (hereinafter called the project), including such operation and maintenance costs as have been covered into construction costs under the Act of March 7, 1928 (45 Stat. 200, 212-213), and supplemental Acts, and including the unpaid operation and maintenance costs for the irrigation seasons of 1926 and 1927 which are hereby covered into construction costs, shall be accomplished as prescribed by this Act, notwithstanding any provision of law to the contrary.

Sec. 2. (a) All costs heretofore or hereafter incurred for the construction of the irrigation system shall be allocated to the Mission Valley, Camas, and Jocko divisions of the project in proportion to the amount of such costs incurred for the respective benefit of each of these divisions.

(b) The net revenues heretofore and hereafter accumulated from the power system shall be determined by deducting from the gross revenues the expenses of operating and maintaining the power system, and the funds necessary to provide for the creation and maintenance of appropriate reserves in accordance with section 3 of the Act of August 7, 1946 (60 Stat. 895; 31 U. S. C., sec. 725s-3).

(c) The deferred obligation established by the Act of May 10, 1926 (44 Stat. 453, 464-466), for repayment of the per acre costs of the Camas division in excess of the per acre costs of the Mission Valley division shall be determined on the basis of the costs heretofore incurred for the construction of those divisions, and shall be liquidated from the net revenues heretofore accumulated from the power system.

(d) The remainder of the net revenues heretofore accumulated from the power system shall be applied to reduce the reimbursable costs heretofore incurred for the construction of the power system and the reimbursable costs heretofore incurred for the construction of the irrigation system (exclusive of the deferred obligation for the excess costs of the Camas division) as allocated among the several divisions pursuant to subsection (a) of this section, in proportion to the respective amounts of each of the foregoing categories of costs.

(e) The reimbursable costs heretofore incurred for the construction of the irrigation system of each division of the project and not repaid through the credits provided for in subsections (c) and (d) of this subsection shall be

scheduled for repayment in annual installments of approximately equal amount, in a manner which will provide for liquidation of such costs over a period of fifty years from January 1, 1950. The reimbursable costs hereafter incurred for the construction of the irrigation system shall be added to the schedule of repayments established pursuant to this subsection by increasing the amount or the number, or both, of the annual installments maturing after the incurrence of such costs, in a manner which will provide for their liquidation within a period not exceeding the useful life of the works involved, or not exceeding fifty years from the time when the additional costs are incurred, whichever period is the lesser. Each annual installment shall be distributed over all irrigable lands within the division on an equal per acre basis, and the costs so charged against any parcel of lands within the division shall constitute a first lien thereon under the Act of May 10, 1926 (44 Stat. 453, 464-466). Upon the maturity or prepayment of any annual installment, the amount of the installment shall be reduced by deducting any sums included therein which are chargeable to lands on which the collection of construction costs is then deferred under the Act of July 1, 1932 (47 Stat. 564; 25 U. S. C., sec. 386a), or which are chargeable to other lands and have been already repaid to the United States.

(f) The reimbursable costs heretofore incurred for the construction of the power system and not repaid through the credits provided for in subsections (c) and (d) of this subsection, or through other credits from the revenues of the power system, shall be scheduled for repayment in annual installments of approximately equal amount, in a manner which will provide for liquidation of such costs over a period not exceeding the remaining useful life of the power system as a whole, or not exceeding fifty years from January 1, 1950, whichever period is the lesser. The reimbursable costs hereafter incurred for the construction of the power system shall be added to the schedule of repayments established pursuant to this subsection by increasing the amount or the number, or both, of the annual installments maturing after the incurrence of such costs, in a manner which will provide for their liquidation within a period not exceeding the useful life of the works involved, or not exceeding fifty years from the time when the additional costs are incurred, whichever period is the lesser. Each annual installment shall be repaid to the United States solely out of the revenues from the power system.

(g) Electric energy available for sale through the power system shall be sold at the lowest rates which, in the judgment of the Secretary of the Interior, will produce net revenues sufficient to liquidate the annual installments of the power system construction costs established pursuant to subsection (f) of this section, and (for the purpose of reducing the irrigation system construction costs chargeable against the lands embraced within the project and of insuring the carrying out of the intent and purpose of legislation and repayment contracts applicable to the project) to yield a reasonable return on the unliquidated portion of the power system construction costs, and (for the same purpose) to yield such additional sums as will cover the amount by which the wholesale value of the electric energy sold exceeds the cost thereof where such excess is the result of the electric energy having been obtained on a special basis in return for water rights or other grants.

(h) All net revenues hereafter accumulated from the power system shall be applied annually to the following purposes, in the following order of priority:

(1) To liquidate all matured installments of the schedule of repayments for construction costs of the power system;

(2) To liquidate all matured installments of the schedule of repayments for construction costs of the irrigation system of each division, on an equal per acre basis for all irrigable lands within the division;

(3) To liquidate unmatured installments of the schedule of repayments for construction costs of the power system which will mature at a date not later than the maturity of any unliquidated installment of irrigation system construction costs;

(4) To liquidate unmatured installments of the schedule of repayments for construction costs of the irrigation system of each division which will mature at a date prior to the maturity of any unliquidated installment of power system construction costs, on an equal per acre basis for all irrigable lands within the division;

(5) To liquidate construction costs chargeable against Indian-owned lands the collection of which is deferred under the Act of July 1, 1932 (47 Stat. 564; 25 U. S. C., sec. 386a); and

(6) To liquidate the annual operation and maintenance costs of the irrigation system.

(i) In applying net revenues from the power system to the annual installments of irrigation system construction costs for any division of the project under the preceding subsection, allowance shall be made for any construction costs deferred under the Act of July 1, 1932 (47 Stat. 564; 25 U. S. C., sec. 386a), or already repaid to the United States which have been deducted from such installments under subsection (e) of this section, by distributing the net revenues available for such application over all irrigable lands within the division on an equal per acre basis, and by applying the net revenues distributed to the lands chargeable with the construction costs that have been so deferred or repaid, in amounts proportionate to the deductions made on account of such costs, to any then unpaid or subsequently assessed costs of operating and maintaining the irrigation system which are chargeable against the same lands.

(j) Any matured installment of irrigation system construction costs, or portion thereof, which is not liquidated at or before its maturity through the application thereto of net revenues from the power system under subsection (h) of this section shall be repaid to the United States by an assessment against the lands chargeable with the construction costs included in the installment. Such repayment shall be deferred for any period of time that may be requisite to provide for the assessment and collection of such costs in conformity with the laws of the State of Montana, but shall be completed within two years after the maturity of the installment concerned.

Sec. 3. The repayment adjustments provided for in sections 1 and 2 of this Act shall not become effective unless, within two years after the approval of this Act, the irrigation districts embracing lands within the project not covered by trust or restricted patents have entered into contracts satisfactory to the Secretary of the Interior, whereby such districts (1) obligate themselves for the repayment of the construction costs chargeable against all irrigable lands embraced within the districts contracting (exclusive of Indian-owned lands on which the collection of construction costs is deferred) to the extent and in the manner prescribed by sections 1 and 2 of this Act; (2) consent to such revisions in the limits of cost for the project, or any division thereof, as the Secretary and the districts contracting may mutually agree upon in order to facilitate the making of needed improvements and extensions to the irrigation and power systems; (3) provide for redetermination by the Secretary of the irrigable area of the project, or any division thereof, and for the exclusion of lands from the project,

with the consent of the holder of any water rights that would be canceled by such exclusion; and (4) make such other changes in the existing repayment contracts as the Secretary and the districts contracting may mutually agree upon for accomplishment of the purposes of this Act. In order to facilitate the commencement of repayment at the earliest practicable time, such contracts may provide for adjusting the maturity dates or amounts of the annual installments in a manner which will ultimately place the repayment schedules on substantially the same basis as though such contracts had been entered into prior to their actual execution, but not earlier than January 1, 1949.

Sec. 4. Unpaid charges for operation and maintenance of the irrigation system which were assessed prior to May 10, 1926, against any lands within the project, amounting to a sum not exceeding $40,549.89, and unpaid charges due from consumers for electric energy sold through the power system between July 1, 1931, and June 30, 1942, amounting to a sum not exceeding $2,195.16, are hereby canceled. The cancellation of the operation and maintenance charges shall be reported in the reimbursable accounts rendered to the Comptroller General of the United States, pursuant to the Act of April 14, 1910 (36 Stat. 269, 270; 25 U. S. C., sec. 145), as deductions from the total indebtedness of the project without regard to the fiscal years in which, or the appropriations from which, the expenditures were made.

Sec. 5. There is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, the following sums, for the following purposes, to be reimbursed to the United States as hereinafter provided:

(a) The sum of $64,161.18, with interest thereon at the rate of 4 per centum per annum from May 18, 1916, and the sum of $409.38, with interest thereon at the same rate from December 1, 1925, to be used to repay the Confederated Salish and Kootenai Tribes of the Flathead Reservation in Montana the balance remaining due them under the Act of May 18, 1916 (39 Stat. 123, 141). The aggregate principal amount of $64,570.56 so repaid shall be added to the construction costs of the project and shall be reimbursable.

(b) The sum of $400,000 to be deposited in the United States Treasury to the credit of the Confederated Salish and Kootenai Tribes of the Flathead Reservation in Montana; of which sum one-half shall be in full settlement of all claims

of said tribes on account of the past use of tribal lands for the physical works and facilities of the irrigation and power systems of the project, or for wildlife refuges; and the other one-half shall be in full payment to said tribes for a permanent easement to the United States, its grantees and assigns, for the continuation of any and all of the foregoing uses, whether heretofore or hereafter initiated, upon the tribal lands now used or reserved for the foregoing purposes. The said tribes shall have the right to use such tribal lands, and to grant leases or concessions thereon, for any and all purposes not inconsistent with such permanent easement. The amount deposited in the Treasury pursuant to this subsection shall be added to the construction costs of the project and shall be reimbursable.

(c) The sum of $1,000,000 to continue the construction of the irrigation and power systems of the project. Amounts expended pursuant to this subsection shall be added to the construction costs of the project and shall be reimbursable.

(d) No expenditure shall be made from any appropriation granted under the authorizations contained in this section until the repayment of all reimbursable construction costs incurred through such expenditure has been secured by contracts conforming to the requirements of section 3 of this Act.

Sec. 6. In each fiscal year commencing after the approval of this Act for which an appropriation of the power revenues from the project is made in an indefinite amount pursuant to section 3 of the Act of August 7, 1946 (60 Stat. 895; 31 U. S. C., sec. 725s-3), the power revenues so appropriated shall be available, to the extent of not to exceed $75,000, for the purpose, in addition to those other purposes now required or permitted by law, of making such improvements and extensions to the power system as the Secretary of the Interior may deem requisite for the provision of electric service to persons whose applications for such service could not otherwise be complied with in due course of business. Amounts so expended shall be added to the unmatured portion of the reimbursable construction costs of the power system in accordance with subsection 2 (f) of this Act, so as not to reduce the net power revenues available for application under subsection 2 (h) of this Act.

Sec. 7. Consistent with the terms of the repayment contracts heretofore or hereafter executed, the Secretary of the Interior is hereby authorized to issue such public notices fixing construction costs and apportioning construction charges, to enter into such contracts, to make such determinations, to

effect such adjustments in project accounts, to prescribe such regulations, and to do such other acts and things as may be necessary or appropriate to accomplish the purposes of this Act.

Sec. 8. All Acts or parts thereof inconsistent with the provisions of this Act are hereby repealed. [Amended Act 5/25/50, 64 Stat.192, post p.79.]

Approved May 25, 1948.

[August 18, 1949, 63 Stat. 614]

CHAP. 472.--An Act Authorizing the Secretary of the Interior to issue to Lake County, Montana, a patent in fee to certain Indian lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is authorized and directed, with the consent and approval of the tribal council of the Consolidated Tribes of Flathead, Kootenai, and Salish Indians, to issue to Lake County, Montana, a patent in fee to the following-described lands on the Flathead Indian Reservation, Montana: The north half of the northwest quarter of the southwest quarter of the southeast quarter of section 36, township 21 north, range 20 west, Montana principal meridian, containing five acres more or less.

Approved August 18, 1949.

[August 19, 1949, 63 Stat. 621]

CHAP. 487.--An Act To authorize an appropriation in aid of a system of drainage and sanitation for the city of Polson, Montana.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, the sum of $100,000 or so much thereof as may be necessary for the repair and rehabilitation or replacement of the drainage structures of a system of drainage for lands within and adjacent to the city of Polson, Montana, on the Flathead Indian Reservation in sections 3, 4, 8, 9, and 10, township 22 north, range 20 west, Montana principal meridian: Provided, That the said

city or the residents in the affected area form a drainage-sanitation district and levy an assessment to provide additional funds to convert the drainage lines into a dual purpose system for drainage and sewer disposal purposes and agree to take title to the system and operate and maintain it in perpetuity.

Sec. 2. Nothing in this Act shall be construed as an admission of liability on the part of the United States for damages that may be claimed by any property owner as resulting from seepage in theaffected area, and the drainage-sanitation district formed pursuant to section 1 hereof shall specifically agree to hold the United States harmless against any and all damage claims that may be asserted by property owners of the area.

Approved August 19, 1949.

[October 6, 1949, 63 Stat. 722]

An Act To amend an Act entitled "An Act to provide for the adjustment of irrigation charges on the Flathead Indian irrigation project, Montana, and for other purposes", approved May 25, 1948.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first sentence of section 4 of the Act entitled "An Act to provide for the adjustment of irrigation charges on the Flathead Indian irrigation project, Montana, and for other purposes", approved May 25, 1948, is hereby amended to read as follows:

"Sec. 4. Unpaid charges for operation and maintenance of the irrigation system which were assessed prior to May 10, 1926, against any lands within the project, amounting to a sum not exceeding $40,549.89, together with all unpaid interest and penalties on such charges, and unpaid charges due from consumers for electric energy sold through the power system between July 1, 1931, and June 30, 1942, amounting to a sum not exceeding $2,195.16, together with interest thereon, are hereby canceled."

Approved October 6, 1949

[May 25, 1950, 64 Stat. 192]

CHAP. 201.—An Act To amend certain provisions of the Act of May 25, 1948 (Public Law 554,Eightieth Congress), relating to the Flathead Indian irrigation project.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the repayment adjustments and other provisions of sections 1 and 2 of the Act of May 25, 1948 (Public Law 554, Eightieth Congress), providing for the adjustment of irrigation charges on the Flathead Indian irrigation project, Montana, and for other purposes, shall be effective as to lands included in any irrigation district which has or which shall have entered into a contract conforming to the provisions of said Act on or before May 25, 1951. Said Act as herein amended shall not be deemed to defer the repayment obligations provided for in existing contracts between the Secretary of the Interior and any irrigation district on the Flathead Indian irrigation project which has not entered into a repayment contract conforming to the provisions of the Act of May 25, 1948, as herein amended, unless and until such district shall have entered into such a contract: Provided, That the appropriation authorizations of said Act shall be effective, and moneys appropriated thereunder shall be available for expenditure, when an irrigation district or districts containing not less than 70 per centum of the irrigable acreage of thenon-Indian lands within the Flathead Indian irrigation project shall have entered into repayment contracts under said Act.

Approved May 25, 1950.

[June 16, 1950, 64 Stat. 229]

CHAP. 264.—An Act To amend the Act of February 25, 1920 (41 Stat. 452), and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the second proviso of the Act entitled "An Act for the relief of certain members of the Flathead Nation of Indians, and for other purposes", approved February 25, 1920 (41 Stat. 452), is amended by striking out "when the merchantable timber has been cut from any lands allotted hereunder" and substituting in lieu thereof "when the first cutting of merchantable timber from any lands allotted hereunder has been completed".

Sec. 2. The right heretofore reserved to the United States in any of the patents for allotments issued under the provisions of said Act of February 25, 1920 (41 Stat. 452), to cut and market timber for the benefit of the Confederated Salish and Kootenai Tribes of the Flathead Reservation shall be limited to the cutting of so much of the merchantable timber on such allotments as may be cut during the first cutting operations on such allotments, and when such cutting operations have been completed, the title to the residual timber on such allotments shall thereupon pass to the respective allottees or their heirs or devisees.

Approved June 16, 1950.

[August 8, 1950, 64 Stat. 418]

An Act To authorize the elimination of lands from the Flathead Indian irrigation project, Montana.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is hereby authorized to eliminate from the Flathead Indian irrigation project, on application by the owner thereof, twelve acres, more or less, of land in the northwest quarter of the northwest quarter of section 6, township 21 north, range 23 west, of the Montana meridian: Provided, That the landowner shall pay all accrued irrigation charges heretofore assessed against the land and relinquish the water right to the United States for the benefit of the Flathead irrigation project, and no further charges shall be assessed against the land: Provided further, That the obligations of the Flathead irrigation district for the repayment of the reimbursable construction costs of the Camas division of the Flathead Indian irrigation project shall not be reduced or otherwise affected by reason of the elimination of the land, and such elimination shall not be made until the Board of Commissioners of that district has consented thereto: And provided further, That, notwithstanding the elimination of said land from the Flathead irrigation project, there shall be reserved to the United States a right-of-way for ditches and canals now or hereafter needed for the operation and maintenance of the project works, and the owner of said land shall release the United States and its assigns from all liability for damage to said land by reason of the operations of the project.

Approved August 8, 1950.

[April 1, 1952, 66 Stat. 32]

CHAP. 126.—An Act To authorize the Secretary of the Interior to issue to School District Numbered 28, Ronan, Montana, a patent in fee to certain Indian land.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is authorized and directed, with the consent of the Tribal Council of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, to issue to School District Numbered 28, Ronan, Montana, a patent in fee to certain land situated in Ronan, Montana, and more particularly described as follows: South half northwest quarter southwest quarter southeast quarter, section 36, township 21 north, range 20 west, containing five acres, more or less, of Tribal Agency Reserve Land.

Approved April 1, 1952.

[August 1, 1953, 67 Stat. B132]

CONCURRENT RESOLUTION

WHEREAS it is the policy of Congress, as rapidly as possible, to make the Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, to end their status as wards of the United States, and to grant them all of the rights and prerogatives pertaining to American citizenship; and

WHEREAS the Indians within the territorial limits of the United States should assume their full responsibilities as American citizens: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That it is declared to be the sense of Congress that, at the earliest possible time, all of the Indian tribes and the individual members thereof located within the States of California, Florida, New York, and Texas, and all of the following named Indian tribes and individual members thereof, should be freed from Federal supervision and control and from all disabilities and limitations specially applicable to Indians: The Flathead Tribe of Montana, the Klamath

Tribe of Oregon, the Menominee Tribe of Wisconsin, the Potowatamie Tribe of Kansas and Nebraska, and those members of the Chippewa Tribe who are on the Turtle Mountain Reservation, North Dakota. It is further declared to be the sense of Congress that, upon the release of such tribes and individual members thereof from such disabilities and limitations, all offices of the Bureau of Indian Affairs in the States of California, Florida, New York, and Texas and all other offices of the Bureau of Indian Affairs whose primary purpose was to serve any Indian tribe or individual Indian freed from Federal supervision should be abolished. It is further declared to be the sense of Congress that the Secretary of the Interior should examine all existing legislation dealing with such Indians, and treaties between the Government of the United States and each such tribe, and report to Congress at the earliest practicable date, but not later than January 1, 1954, his recommendations for such legislation as, in his judgment, may be necessary to accomplish the purposes of this resolution

Passed August 1, 1953.

# PRIVATE STATUTES

17 Stat.

[March 3, 1873, 17 Stat. 787]

CHAP. CDXLIX.--An Act to authorize the Secretary of the Interior to settle the Claims of Messrs. Durfee and Peck and E. H. Durfee for Supplies furnished the Indians in Montana in the Winter of eighteen hundred and sixty-nine--

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized and directed to settle, upon such terms as he shall think just and proper, all claims of Messrs. Durfee and Peck and E. H. Durfee, late Indian agents, for supplies furnished the Crows, Gros Ventres, Assinaboines, and other Indians of Montana Territory, in the winter of eighteen hundred and sixty-nine upon the recommendation of the Honorable James Tufts acting governor of said Territory, and ex-officio superintendent of Indian affairs: Provided, That he shall be satisfied as to the quantity of supplies so furnished, and the amount shall not exceed thirteen thousand four hundred and forty dollars and seventy-three cents, which sum shall be in full of all claims against the government.

Approved, March 3, 1873.

46 Stat.

[April 12, 1930, 46 Stat. 1634]

CHAP. 146.--An Act For the relief of Carl Stanley Sloan, minor Flathead allottee.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is, hereby authorized to sell and convey under such terms and conditions as he may prescribe, the homestead allotment of Carl Stanley Sloan, minor Flathead allottee numbered 3265, described as the northeast quarter northeast quarter section 27, township 21 north, range 21 west, Montana meridian, Montana, containing forty acres, allotted to him under the provisions of the Act of Congress approved February 25, 1920 (Forty-first Statutes at Large, page 452).

Approved, April 12, 1930.

[March 3, 1933, 47 Stat. 1753]

CHAP. 261.--An Act To provide for the addition of the names of certain persons to the final roll of the Indians of the Flathead Indian Reservation Montana, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized to add to the final roll of the Indians of the Flathead Indian Reservation, Montana, approved January 22, 1920, under the Act of May 25, 1918 (40 Stat. L. 591), and the Act of June 30, 1919 (41 Stat. L. 9), the names of the following persons, descendants of the confederated Flathead Tribes of Indians: Joseph Russell Bird, Daniel Lawrence Pablo, Valerie Roullier, Henry Roullier, junior, Julia Roullier, Laura Soucie, Blanche Soucie, Joseph Soucie, Julie Soucie, Rose Marie Soucie, and Audra Jane Martin. The Secretary of the Interior is also authorized to pay each of the persons named a sum equal to that heretofore paid per capita to those whose names were upon the approved roll, and to allot each of these persons except Audra Jane Martin the same area of land allotted to children of the Flathead Reservation enrolled upon the final roll, such payments to be made from any tribal funds in the Treasury to the credit of the Flathead Indians, the allotments to be made from any available tribal unallotted lands of the Flathead Reservation.

Approved, March 3, 1933.

[March 24, 1933, 48 Stat. 1296]

CHAP. 9--An Act For the relief of the Holy Family Hospital, Saint Ignatius, Montana.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is authorized and directed to pay to the Holy Family Hospital, Saint Ignatius, Montana, out of any money in the Treasury not otherwise appropriated, the sum of $8,825.66, in full satisfaction of all claims against the United States for compensation for the care by such hospital of persons admitted thereto under authority of the Flathead Indian Agency, State of Montana, prior to and

including November 30, 1931: Provided, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this Act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

Approved, March 24, 1933.

[June 11, 1934, 48 Stat. 1380]

CHAP. 451.--An Act For the relief of Peter Pierre.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, the sum of $45 to Peter Pierre, in payment for a horse which was lost while being used to transport supplies to a forest fire on the Flathead Indian Reservation, State of Montana.

Approved, June 11, 1934.

[June 14, 1934, 48 Stat. 1391]

CHAP. 525.--An Act For relief of M. M. Twichel.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is authorized and directed to pay to M. M. Twichel, of Saint Ignatius, Montana, out of any money in the Treasury not otherwise appropriated, the sum of $3,433.34 in full satisfaction of his claim against the United States for compensation for services rendered and expenses incurred in connection with the burial of Indians on the Flathead Indian Reservation, Montana, prior to May 1, 1933: Provided, That no part of the amount appropriated in

this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or agents, attorney or attorneys, on account of services rendered in connection with said claim. It shall be unlawful for any agent or agents, attorney or attorneys, to exact, collect, withhold, or receive any sum of the amount appropriated in this Act in excess of 10 per centum thereof on account of services rendered in connection with said claim, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

Approved, June 14, 1934.

[June 14, 1935, 49 Stat. 2078]

CHAP. 251--For the relief of certain Indians of the Flathead Reservation killed or injured en route to dedication ceremonies of the Going-to-the-Sun Highway, Glacier National Park.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, the sums of $2,890 in full settlement of all claims of the following Indians of the Flathead Indian Reservation, Montana, against the United States, arising out of any and all injuries sustained while en route to the dedication ceremonies of the Going-to-the-Sun Highway in Glacier National Park in the amounts indicated: Sophie Conko, $600; Mary Calowahcan Smallsalmon, $190; Alexander Calowahcan, $250; Michael Smallsalmon, $250; Joseph Woodcock, $30; Martine Siwahsah, $20; Sophie C. Granjo, $20; Sophie Moiese, $600; Isabel Granjo, $30; Eneas Granjo, $50; Mary Kyser Stateah, $600; Eneas Michel Conko, $50; Pierre Pierre, $50; William Michel, $50; Andrew Manybear, $100: Provided, That if any of the beneficiaries under this Act are deceased, payment herein authorized shall be made to their heirs; and to pay the sum of $3,000 to the heirs of Louise Cullooyah, deceased, and the sum of $3,000 to the heirs of Michel Kizer, deceased, also of the Flathead Indian Reservation, who were killed while en route to the said dedication ceremonies of the Going-to-the-Sun Highway in Glacier National

Park in full settlement of all claims against the United States arising out of the death of the said Indians on the said occasion.

Approved, June 14, 1935.

APPROPRIATION STATUTES

## APPROPRIATIONS

| Date of Act | Citation | What and How Much |
|---|---|---|
| 3/29/60 | 12 Stat. 4, 8-9 | Treaty instalments and appropriations-- $36,000, 2,400, 1,200, 1,800, 5,400, 9,000, 1,200, 1,000, 3,000, 3,000, 500, 350. |
| 6/19/60 | 12 Stat. 44, 58 | Treaty instalments and appropriations--$1,000, $1,000. |
| 3/2/61 | 12 Stat. 221, 234-235 | Treaty instalments and appropriations--$6,000, 300, 800, 500, 7,400, 500, 300, 1,400, 300, 1,500. |
| 6/25/64 | 13 Stat. 161, 174-175 | Treaty instalments and appropriations--$5,000, 300, 1,800, 500, 7,400, 500, 300, 1400, 300, 1500. |
| 3/3/65 | 13 Stat. 541, 553-554 | Treaty instalments and appropriations--$5,000, 300, 1,800, 500, 7,400, 500, 1,400, 300, 1,500, 11,920. |
| 7/26/66 | 14 Stat. 255, 269-270 | Treaty instalments and appropriations--$5,000, 300, 1,800, 500, 7,400, 500, 300, 1,400, 300, 1,500. |
| 3/2/67 | 14 Stat. 492, 500-501, 514 | Treaty instalments and appropriations--$5,000, 300, 1,800, 500, 7,400, 500, 300, 1,400, 300, 1,500, 11,920.41, 1,000. |
| 7/27/68 | 15 Stat. 199, 207-208 | Treaty instalments and appropriations--$5,000, 300, 1,200, 500, 7,400, 500, 300, 1,500, 4,000. |
| 4/10/69 | 16 Stat. 13, 22-23 | Treaty instalments and appropriation--$4,000, 300, 1,800, 500, 7,400, 500, 300, 1,400, 300, 1,500, 400. |
| 7/15/70 | 16 Stat. 335, 343-344 | Treaty instalments and appropriations--$4,000, 300, 1,800, 500, 7,400, 500, 300, 1,400, 300, 1,500, 4,000, 11,800. |

## APPROPRIATIONS

| Date of Act | Citation | What and How Much |
|---|---|---|
| 3/3/71 | 16 Stat. 544, 553 | Treaty instalments and appropriations--$4,000, 300, 1,800, 500, 7,400, 500, 300, 1,400, 300, 500, 2,000. |
| 5/29/72 | 17 Stat. 165, 188 | Removal to Jocko Reservation--$6,000. |
| 2/14/73 | 17 Stat. 437, 438, 439, 446 | Pay 71 Indian agents, including Flathead--$106,500; Pay of Interpreter--$400; Treaty instalments and appropriations--$4,000, 300, 1,800, 500, 7,400, 500, 300, 1,400, 300, 1,500, 2,000. |
| 6/22/74 | 18 Stat. 133, 139 | Removal to Jocko Reservation--$5,000; Treaty instalments and appropriations--$1,275.44. |
| 6/22/74 | 18 Stat. 146, 155, 156, 173 | Agent's pay--$1,500; Interpreter's pay--$400; Treaty instalments and appropriations--$300, 1,800, 500, 7,400, 500, 300, 1,400, 300, 1,500, 3,000, 1,500; Removal to Jocko Reservation--$5,000 1/. |

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1/ "Provided, That the proceeds of the sales of land in Bitter Root Valley, Montana Territory, referred to in the second section of the act of Congress approved June fifth, eighteen hundred and seventy-two, entitled 'An act to provide for the removal of the Flathead and other Indians from the Bitter Root Valley, in the Territory of Montana,' shall be paid into the Treasury of the United States; in the same manner that other moneys derived from the sale of other public lands are now paid in: And provided further, That in lieu of the amount provided to be set apart therefrom by the act of Congress of June fifth, eighteen hundred and seventy-two, hereinbefore referred to there shall be annually appropriated, out of any money in the Treasury of the United States, not otherwise appropriated, the sum of five thousand dollars, for the period of ten years, to be expended, under the direction of the President, in the manner deemed for the best good of the Indians who have been removed from Bitter Root Valley: And provided further, That no part of said sum shall be paid to any Indian of said tribe who shall not have settled upon the Jocko reservation." 18 Stat. 173.

## APPROPRIATIONS

| Date of Act | Citation | What and How Much |
|---|---|---|
| 3/3/75 | 18 Stat. 420, 430-431, 447 | Treaty instalments and appropriation--$300, 1,800, 500, 7,400, 500, 300, 1,400, 300, 500, 3,000, 1,500; Removal to Jocko Reservation--$5,000. |
| 8/15/76 | 19 Stat. 176, 177, 183, 195 | Agent's pay--$500; Interpreter's pay--$400; Treaty instalments and appropriation--$300, 1,800, 500, 7,400, 500, 300, 1,400, 300, 1,500, 300; Removal to Jocko Reservation--$5,000. |
| 3/3/77 | 19 Stat. 271, 272, 277-278, 290 | Agent's pay--$1,500; Interpreter's pay--$300; Treaty instalments and appropriations--$300, 1,800, 500, 7,400, 500, 300, 1,400, 300, 1,500, 3,000; Removal to Jocko Reservation--$5,000. |
| 5/27/78 | 20 Stat. 63, 64, 65, 71, 85 | Agent's pay--$1,500; Interpreter's pay--$300; Treaty instalments and appropriations--$300, 1,800, 300, 7,400, 500, 300, 1,200, 300, 1,500, 16,600; Removal to Jocko Reservation--$5,000; Indian Bureau expenses, Montana (includes Flathead)--$6,000. |
| 2/17/79 | 20 Stat. 295, 296, 301-302 | Agent's pay--$1,500; Interpreter's pay--$300; Treaty instalments and appropriations--$300, 1,800, 300, 7,400, 500, 300, 1,200, 300, 13,600; Removal to Jocko Reservation--$5,000. |
| 5/11/80 | 21 Stat. 114, 115, 120, 128, 129 | Agent's pay--$1,500; Interpreter's pay--$300; Treaty instalments and appropriations--$6,000; Removal to Jocko Reservation--$5,000; Subsistence and civilization--$13,500. |
| 3/3/81 | 21 Stat. 485, 486, 498 | Agent's pay--$1,500; Interpreter's pay--$300; Removal to Jocko Reservation--$5,000; Subsistence and civilization--$13,000. |

## APPROPRIATIONS

| Date of Act | Citation | What and How Much |
|---|---|---|
| 5/17/82 | 22 Stat. 68, 69, 70 | Agent's pay--$1,500; Interpreter's pay 2/. |
| 8/5/82 | 22 Stat. 257, 279 | Support appropriation--$13,50; Treaty instalment and appropriation--$719.32. |
| 3/1/83 | 22 Stat. 433, 446 | Agent's pay--$1,500; Subsistence and civilization--$13,000. |
| 7/4/84 | 23 Stat. 77, 89, 90 | Agent's pay--$1,500; Subsistence and civilization--$11,000; Carlos's Band support and civilization--$21,000. |
| 3/3/85 | 23 Stat. 362, 363, 382 | Agent's pay--$1,500; Carlo's Band support and civilization--$18,000; School support--$2,000 3/ |

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2/ "For the payment of necessary interpreters, to be distributed in the discretion of the Secretary of the Interior, twenty thousand dollars; and section two thousand and seventy of the Revised Statutes be, and the same is hereby, repealed." 22 Stat. 70.

"Sec.2070. The salaries of interpreters lawfully employed in the service of the United States, in Oregon, Utah, and New Mexico, shall be five hundred dollars a year each, and of all so employed elsewhere, four hundred dollars a year each." Rev. Stat. 2d Ed., 1878.

3/ "For payment, out of the unexpended balance of the appropriation for support of schools for the year eighteen hundred and eighty-four, to the Indian Industrial School for Boys on the Flathead Indian Reservation, for clothing, subsisting, maintaining, and educating twenty Indian pupils in excess of the number provided for by contract with the Indian Department, during the twelve months beginning July first, eighteen hundred and eighty-three and ending June thirtieth, eighteen hundred and eighty-four, two thousand dollars." 23 Stat. 382.

## APPROPRIATIONS

| Date of Act | Citation | What and How Much |
|---|---|---|
| 5/15/86 | 24 Stat. 29, 41 | Agent's pay--$1,500; Carlo's Band support and civilization--$16,000; Support and civilization--$10,000. |
| 3/2/87 | 24 Stat. 449, 461 | Agent's pay--$1,500; Carlo's Band support and civilization--$12,000; Support and civilization--$10,000. |
| 3/30/88 | 25 Stat. 47, 66 | Support and civilization--$125.40. |
| 6/29/88 | 25 Stat. 217, 218, 230 | Agent's pay--$1,500; Carlo's Band support and civilization--$12,000; Support and civilization--$10,000. |
| 3/2/89 | 25 Stat. 980, 981, 995 | Agent's pay--$1,500; Carlo's Band support and civilization--$12,000; Support and civilization--$10,000. |
| 8/19/90 | 26 Stat. 336, 337, 351 | Agent's pay--$1,500; Carlo's Band support and civilization--$12,000; Support and civilization--$10,000. |
| 3/3/91 | 26 Stat. 989, 990, 1004 | Agent's pay--$1,500; Carlo's Band support and civilization--$12,000; Support and civilization--$10,000. |
| 7/13/92 | 27 Stat. 120, 121, 137, 138-139 | Agent's pay--$1,500; Carlo's Band support and civilization--$12,000; Support and civilization--$10,000; Substation and mills--$10,000 4/; Negotiations for land--$5,000 5/. |

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4/ "Substation and mills, Flathead Agency, Montana: Establishment of substation, purchase of saw and flour mills, and construction of necessary buildings for same; purchase of animals and pay of employees at Flathead Agency, Montana, ten thousand dollars". 27 Stat. 137.

5/ "To enable the Secretary of the Interior in his discretion to reopen the negotiations with the Shoshone and Arapahoe Indians for the surrender of certain portions of their reservation in the State of Wyoming, and Flathead and confederated tribes of Indians in the State of Montana, five thousand dollars, or so much thereof as may be necessary, to be immediately available, and not more than two of the Commissioners to be appointed hereunder shall be of the same political party, and any agreement entered into shall be ratified by Congress." 27 Stat. 138-139.

## APPROPRIATIONS

| Date of Act | Citation | What and How Much |
|---|---|---|
| 7/28/92 | 27 Stat. 282, 294 | Removal of Indians to reservation--$184.71. |
| 3/3/93 | 27 Stat. 612, 613 | Agent's pay--$1,500; Carlo's Band support and civilization--$12,000; support and civilization--$10,000; Substation and mills--$3,500. |
| 8/15/94 | 28 Stat. 286, 287, 302 | Agent's pay--$1,500; Carlo's Band support and civilization--$12,000; Support and civilization--$10,000. |
| 3/2/95 | 28 Stat. 876, 891. | Agent's pay--$1,500; Carlo's Band support and civilization--$12,000; Support and civilization--$10,000; Substation and mills--$3,000. |
| 6/8/96 | 29 Stat. 267, 293 | Substation and mills--$137.04. |
| 6/10/96 | 29 Stat. 321, 322, 337 | Agent's pay--$1,500; Carlo's Band support and civilization--$12,000; Support and civilization--$10,000. |
| 6/7/97 | 30 Stat. 62, 63, 77, 85, 86 | Agent's pay--$1,500; Carlo's Band support and civilization--$10,000; Support and civilization--$10,000; Substation and mills--$3,000; Continuing negotiations--$10,000 (other Indians included). |
| 7/1/98 | 30 Stat. 571, 572, 585, 596 | Agent's pay--$1,500; Carlo's Band support and civilization--$10,000; Support and civilization--$10,000; Continuing negotiations--$15,000 (other Indians included); Reappraisement of certain lands--(amount not given) 6/. |

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6/ "SEC. 9. That with the consent of the Indians, severally, the Secretary of the Interior is hereby authorized to cause a reappraisement of the unsold tracts of land of the Flathead Indians, situated in the Bitter Root Valley, Montana, by such person connected with the Indian service as he may designate, and that such lands shall then be sold, at the reappraised value, as provided for in the Act of Congress of March second, eighteen hundred and eighty-nine, chapter three hundred and ninety-one, Twenty-fifth Statutes at Large, page eight hundred and seventy-one." 30 Stat. 596.

APPROPRIATION

| Date of Act | Citation | What and How Much |
|---|---|---|
| 7/7/98 | 30 Stat. 652, 677 | Continuing negotiations--$296.85. |
| 3/1/99 | 30 Stat. 924, 937 | Agent's pay--$1,500; Carlo's Band support and civilization--$10,000; Support and civilization--$10,000. |
| 3/3/99 | 30 Stat. 1214, 1235 | Continuing negotiations--$14,500 (other Indians included); Support and civilization--$46.75; Substation--$29.25. |
| 5/31/00 | 31 Stat. 221, 234 | Agent's pay--$1,500; Carlo's Band support and civilization--$8,000; Support and civilization--$8,000. |
| 6/6/00 | 31 Stat. 280, 302 | Continuing negotiations--$15,000 (other Indians included). |
| 3/3/01 | 31 Stat. 1010, 1041 | Continuing negotiations--$12,000 (other Indians included). |
| 3/3/01 | 31 Stat. 1058, 1059 | Agent's pay--$1,500; Carlo's Band support and civilization--$8,000; Support and civilization--$8,000. |
| 5/27/02 | 32 Stat. 245, 255 | Agent's pay--$1,500; Carlo's Band support and civilization--$6,000; Support and civilization--$6,000. |
| 7/1/02 | 32 Stat. 552 | Support and civilization--$234.61. |
| 3/3/03 | 32 Stat. 982, 992 | Agent's pay--$1,500; Carlo's Band support and civilization--$6,000; Support and civilization--$6,000. |
| 3/3/03 | 32 Stat. 1031 | Support and civilization--$307.85. |
| 4/21/04 | 33 Stat. 189, 190, 202 | Agent's pay--$1,500; Support and civilization--$10,000. |
| 3/3/05 | 33 Stat. 1048, 1057 | Agent's pay--$1,500; Support and civilization--$9,000. |
| 6/20/06 | 34 Stat. 325, 353 | Agent's pay--$1,500. |

## APPROPRIATIONS

| Date of Act | Citation | What and How Much |
|---|---|---|
| 3/1/07 | 34 Stat. 1015, 1034 | Agent's pay--$1,500; Completion of survey of Reservation--$30,000 7/. |
| 2/15/08 | 35 Stat. 8, 19 | Complete survey of reservation--$60,000 (reimbursable). |
| 4/30/08 | 35 Stat. 70, 83-84 | Agent's pay--$1,800; Support and civilization--$9,000; Irrigation system--$50,000 8/; Complete survey--$15,000. |
| 3/3/09 | 35 Stat. 781, 795 | Agent's pay--$1,800; Support and civilization--$9,000; Irrigation--$250,000 9/ |

7/ "To enable the Secretary of the Interior to complete the survey, allotment, classification, and appraisement of the lands in the Flathead Indian Reservation, Montana, thirty thousand dollars: Provided, That this sum shall be reimbursed the United States from the proceeds of the sale of the surplus lands after the allotments are made." 34 Stat. 1034.

8/ "For preliminary surveys, plans, and estimates of irrigating systems to irrigate the allotted lands of the Indians of the Flathead Reservation in Montana and the unallotted irrigable lands to be disposed of under the Act of April twenty-third, nineteen hundred and four, entitled 'An Act for the survey and allotment of lands now embraced within the limits of the Flathead Indian Reservation in the State of Montana, and the sale and disposal of all surplus lands after allotment,' and to begin the construction of the same, fifty thousand dollars, the cost of said entire work to be reimbursed from the proceeds of the sale of the lands within said reservation." 35 Stat. 83-84.

9/ "For construction of irrigation systems to irrigate the allotted lands of the Indians of the Flathead Reservation in Montana and the unallotted irrigable lands to be disposed of under the Act of April twenty-third, nineteen hundred and four, entitled 'An Act for the survey and allotment of lands now embraced within the limits of the Flathead Indian Reservation in the State of Montana, and the sale and disposal of all surplus lands after allotment,' including the necessary surveys, plans, and estimates, two hundred and fifty thousand dollars, one hundred thousand dollars thereof to be immediately available, the cost of said entire work to be reimbursed from the proceeds of the sale of the lands and timber within said reservation." 35 Stat. 795.

## APPROPRIATIONS

| Date of Act | Citation | What and How Much |
|---|---|---|
| 3/3/09 | 35 Stat. 781, 828 | River and harbor works--$8,185,750 (Includes Polson Bay, Flathead Lake). |
| 4/4/10 | 36 Stat. 269, 277 | Support and civilization--$9,000; Irrigation--$250,000 (reimbursable). |
| 6/25/10 | 36 Stat. 630, 666 | Harbor at Polson Bay--$6,000. |
| 6/25/10 | 36 Stat. 703, 740 | Completing survey of reservation--$10,000. |
| 3/3/11 | 36 Stat. 1058, 1066 | Support and civilization--$9,000; Irrigation system--$150,000 (reimbursable). |
| 8/24/12 | 37 Stat. 518, 526 | Support and civilization--$9,000; Irrigation system--$200,000 (reimbursable); Agency bldgs.--$40,000; (reimbursable) 10/; Sawmill and logging equipment--$20,000 (reimbursable) 11/. |
| 6/30/13 | 38 Stat. 77, 90 | Support and civilization--$12,000; Irrigation system--$325,000 (reimbursable). |
| 4/6/14 | 38 Stat. 312, 332 | Completing survey of reservation--$402.92. |

10/ Refer page 43, supra.

11/ "There is hereby appropriated the sum of twenty thousand dollars to remain available until expended, and the Secretary of the Interior is authorized to use this money, or so much thereof as he may deem necessary, in the purchase of a sawmill and logging equipment and the employment of suitable persons to manufacture and to lumber burned timber on the Flathead Indian Reservation, Montana, and to protect the remaining timber from fire and trespass: Provided, That the sum expended under authority of this Act shall be reimbursed the United States from the proceeds arising from the sale of lands and timber within said reservation under existing Acts of Congress." 37 Stat. 526.

APPROPRIATIONS

| Date of Act | Citation | What and How Much |
|---|---|---|
| 8/1/14 | 38 Stat. 582, 593 | Support and civilization--$12,000; Irrigation system--$200,000 (reimbursable); Tuition for Indian children--$471.60. |
| 5/18/16 | 39 Stat. 123, 139 | Support and civilization--$20,000; Purchase of land--$320 (reimbursable) 12/; Irrigation system--$750,000 (reimbursable) 13/. |
| 3/2/17 | 39 Stat. 969, 980 | Support and civilization--$2,000 14/; Irrigation system--$750,000 (reimbursable) 15/. |
| 5/25/18 | 40 Stat. 561, 574 | Irrigation system--$375,000 (reimbursable) 16/; Support and civilization--$20,000. |

12/ Refer to page 46 of Special Statutes, supra.

13/ Refer to page 46, last paragraph, to page 49 of Special Statutes, supra.

14/ " . . . of which amount not exceeding $1,000 may be expended for the purchase of two automobiles, and not exceeding $4,500 of which shall be expended for salaries." 39 Stat. 980.

15/ "Provided, That not to exceed $15,000 of applicable appropriations made for the Flathead, Blackfeet, and Fort Peck irrigation projects shall be available for the maintenance, repair, and operation of motor-propelled and horse-drawn passenger-carrying vehicles for official use upon the aforesaid irrigation projects: Provided further, That not to exceed $9,000 may be used for the purchase of horse-drawn passenger-carrying vehicles, and that not to exceed $2,000 may be used for the purchase of motor-propelled passenger-carrying vehicles." 39 Stat. 980.

16/ "Provided, That not to exceed $15,000 of applicable appropriations made for the Flathead, Blackfeet, and Fort Peck irrigation projects shall be available for the maintenance, repair, and operation of motor-propelled and horse-drawn passenger-carrying vehicles for official use upon the aforesaid irrigation project: Provided further, That not to exceed $3,500 may be used . . . and not to exceed . . . $4,000 may be used . . ." 40 Stat. 574.

## APPROPRIATIONS

| Date of Act | Citation | What and How Much |
|---|---|---|
| 6/30/19 | 41 Stat. 3, 15, 16, 31 | Support and civilization--$20,000; Irrigation system--$375,000 (reimbursable); Support and civilization--$40,000 (tribal fund |
| 2/14/20 | 41 Stat. 408,17/ 420, 421, 434 | Support and civilization--$20,000; Irrigation system--$200,000 (reimbursable); Support and civilization--$20,000 (tribal fund |
| 3/3/21 | 41 Stat. 1225, 1236, 1237 | Support and civilization--$20,000; Irrigation system--$200,000 (reimbursable); Bitter Root Valley claims--$1,124.67 18/; Support and civilization--$20,000 (tribal funds). |

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17/ "That the State of Montana, acting through its proper officia is hereby authorized to select two hundred acres of unappropriat unreserved, and nonmineral lands within the boundaries of the former Flathead Indian Reservation in Montana, or an equal quantity of public lands of like character within the boundaries of said State, in lieu of the northwest quarter and the northeast quarter of the southwest quarter of section sixteen, township eighteen north, range twenty-one west, Montana meridian, Montana, upon due and proper showing that the lands authorized herein to be surrendered by the State have not been sold or otherwise encumbered by it, and the selection of such lieu lands by the said State shall be a waiver of its right, title, and claim in and to the tracts in said section sixteen above described: Provided, That in case the exchange herein contempla shall be perfected the lands so surrendered by the State shall b held for the benefit of the Flathead Tribe and be subject to such disposition as shall be directed by the Secretary of the Interior." 41 Stat. 408.

18/ "For the purpose of enabling the Secretary of the Interior to settle all unpaid claims against the United States Government to funds derived from sale of patented Indian lands in the Bitte Root Valley, Montana, under the provisions of the Act of March 2 1889 (Twenty-fifth Statutes at Large, page 871), entitled 'An Act to provide for the sale of lands patented to certain members of the Flathead Band of Indians in Montana Territory, and for other purposes,' $1,124.67, the same to be immediately available 41 Stat. 1236.

## APPROPRIATIONS

| Date of Act | Citation | What and How Much |
|---|---|---|
| 5/25/22 | 42 Stat. 552, 570 | Support and civilization--$19,000; Private claims against tribe--$2,250, 851, 531.92 (tribal funds)19/; Support and civilization--$18,000 (tribal funds); Irrigation system--$200,000 (reimbursable). |
| 1/24/23 | 42 Stat. 1174, 1191, 1192 | Support and civilization--$19,000; Support and civilization--$18,000 (tribal funds); Irrigation system--$555,000 (reimbursable). |
| 12/5/24 | 43 Stat. 391, 402 | Irrigation system--$150,000 (reimbursable); Support and civilization--$14,200. |
| 12/6/24 | 43 Stat. 704, 707 | Irrigation system--$7,760 (reimbursable); Support and civilization--$1,830. |
| 3/3/25 | 43 Stat. 1141, 1153, 1159 | Irrigation system--$35,000 (reimbursable); Support and civilization--$14,000; Support and civilization--$41,000 (tribal funds). |
| 3/4/25 | 43 Stat. 1313, 1229 | Adjust compensation to field service employees--$4,370 (tribal funds). |
| 5/10/26 | 44 Stat. 453, 464 | Irrigation system--$575,000 (reimbursable) 20/; Support and civilization--$40,000 (tribal funds). |

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19/ "The Secretary of the Interior is authorized to expend $3,632.92 from funds held by the United States in trust for the Flathead Tribe of Indians in the payment of $2,250 due Swan Johnson on a logging contract and $851 and $531.92, respectively, due Agnes and Paul Antoine, Flathead Indians, for stumpage." 42 Stat. 570.

20/ See pages 54-56 of Special Statutes for provisos.

## APPROPRIATIONS

| Date of Act | Citation | What and How Much |
|---|---|---|
| 1/12/27 | 44 Stat. 934, 953 | Support and civilization--$40,000 (tribal funds). |
| 3/7/28 | 45 Stat. 200, 222 | Support and civilization--$44,000 (tribal funds) 21/. |
| 3/4/29 | 45 Stat. 1562, 1571, 1584 | Industrial assistance--$50,000 (tribal funds, reimbursable); Irrigation system--22/; Support and civilization--$42,000 (tribal funds). |
| 3/4/29 | 45 Stat. 1623, 1639 | Irrigation system--23/. |
| 3/26/30 | 46 Stat. 90, 105 | Support and administration--$5,000 (tribal funds). |
| 5/14/30 | 46 Stat. 279, 301 | Support and administration--$42,000 (tribal funds). |

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21/ " . . . Provided, That the Secretary of the Interior is hereby authorized to pay not exceeding $3,756.20 from said sum, which is hereby made available for the purpose, to the Saint Julian's Hospital, Saint Ignatius, Montana, for medical and hospital services to members of the Flathead Tribe from December 21, 1921, to June 30, 1926; . . ." 44 Stat. 222.

22/ See page 59 of Special Statutes for amount and provisos.

23/ See pages 59-60 of Special Statutes for amount and provisos.

## APPROPRIATIONS

| Date of Act | Citation | What and How Much |
|---|---|---|
| 2/14/31 | 46 Stat. 1115, 1127, 1138 | Irrigation system--$18,000 24/; Support and administration--$50,400 (tribal funds). |
| 3/4/31 | 46 Stat. 1552, 1567 | Irrigation system--$200,000 (reimbursable) 25/. |
| 4/22/32 | 47 Stat. 91, 101 | Irrigation system--$12,000 26/. |
| 2/17/33 | 47 Stat. 820, 830 | Irrigation system--$12,000 27/. |
| 3/3/33 | 47 Stat. 1602 | Irrigation system--$25,000 (reimbursable). |
| 3/2/34 | 48 Stat. 362, 370 | Irrigation system--$12,000 (reimbursable). |
| 5/9/35 | 49 Stat. 176, 187 | Irrigation system--$12,000 (reimbursable) 28/. |

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24/ See pages 61-62 for provisos.

25/ See page 62 of Special Statutes for provisos.

26/ See pages 62-63 of Special Statutes for provisos.

27/ See pages 63-64 of Special Statutes for provisos.

28/ See page 64 of Special Statutes for provisos.

## APPROPRIATIONS

| Date of Act | Citation | What and How Much |
|---|---|---|
| 6/22/36 | 49 Stat. 1757, 1767, 1770, 1778 | Industrial assistance--$15,000 (tribal funds); Irrigation system--$12,000 (reimbursable); Support and administration--$16,000 (tribal funds). |
| 8/9/37 | 50 Stat. 564, 578, 579-580 | Irrigation system--$147,000 (reimbursable); $251,275 (reimbursable). |
| 5/9/38 | 52 Stat. 291, 305, 313, 316 | Irrigation system--$160,000 (reimbursable); Support and administration--$240,000; Improvement of water system--$19,000. |
| 5/10/39 | 53 Stat. 685, 701, 703, 708 | Irrigation system--$205,000 (reimbursable); $500,000 (reimbursable); Support and administration--$24,000 (tribal funds). |
| 6/18/40 | 54 Stat. 407, 420, 422, 428, 430 | Irrigation system--$207,000 (reimbursable); $250,000 (reimbursable); Support and administration--$24,000 (tribal funds); Construction and repair--$5,000. |
| 6/28/41 | 55 Stat. 303, 318, 319, 326 | Irrigation system--$210,000 (reimbursable); $250,000 (reimbursable); Support and administration--$24,000 (tribal funds); Construction and repair--$13,000. |
| 7/3/41 | 55 Stat. 541, 552 | Compensation and expenses of attorney--$7,000. |
| 7/2/42 | 56 Stat. 506, 515, 516, 519, 526 | Purchase of land--$25,000 (tribal funds); Industrial assistance--$35,000 (tribal funds); Irrigation system--$246,300 (reimbursable); Support and administration--$24,000 (tribal funds). |

APPROPRIATION

| Date of Act | Citation | What and How Much |
|---|---|---|
| 7/12/43 | 57 Stat. 451, 458, 459, 462, 468 | Purchase of land--$25,000 (tribal funds); Industrial assistance--$130,000 (tribal funds); Irrigation system--$235,000 (reimbursable); Support and administration--$35,000 (tribal funds). |
| 4/1/44 | 58 Stat. 150, 170 | Irrigation system--$26,890. |
| 6/28/44 | 58 Stat. 463, 471, 475, 480 | Purchase of Land--$38,000 (tribal funds); Industrial assistance--$27,000 (tribal funds); Irrigation system--$278,850 (reimbursable); Support and administration--$35,000 (tribal funds). |
| 7/3/45 | 59 Stat. 318, 325, 329, 331 | Purchase and lease of lands--$25,000 (tribal funds); Irrigation system--$250,300 (reimbursable); $65,000 (reimbursable). |
| 4/19/46 | 60 Stat. 103, 110 | Irrigation system--$25,780. |
| 5/18/46 | 60 Stat. 183, 192 | Irrigation system--$12,800. |
| 7/1/46 | 60 Stat. 348, 360 | Development of Hot Springs enterprise--$350,000 (tribal funds)29/. |
| 3/10/48 | 62 Stat. 213, 221, 272 | Irrigation system--$125,000; Irrigation system and other purposes--$64,570.56 (reimbursable) 30/. |

29/ "Development of Hot Springs enterprise, Confederated Salish and Kootenai Tribes, Montana (tribal funds): For all expenses necessary for the development of a health resort on the Flathead Indian Reservation at Hot Springs, Montana, including the construction of buildings, and the payment of private architectural and engineering fees, $350,000, to remain available until expended, payable from funds held by the United States in trust for the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana." 60 Stat. 360.

30/ See pages 70-77 of Special Statutes for provisos.

## APPROPRIATIONS

| Date of Act | Citation | What and How Much |
|---|---|---|
| 6/29/48 | 62 Stat. 1112, 1119, 1120 | Irrigation system--$200,000; Construction and repair--$750,000. |
| 6/23/49 | 63 Stat. 231, 241 | Construction and repair--$750,000; Payment to tribe--$549,648 ($464,570.56 reimbursable). |
| 10/12/49 | 63 Stat. 765 | Irrigation system--$150,000 (reimbursable). |

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS

✦

# CONSTITUTION AND BYLAWS OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION MONTANA

✦

APPROVED OCTOBER 28, 1935

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1936

# CONSTITUTION AND BYLAWS OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION

## PREAMBLE

We, the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, in order to establish a more responsible organization, promote our general welfare, conserve and develop our lands and resources, and secure to ourselves and our posterity the power to exercise certain rights of self-government not inconsistent with Federal, State, and local laws, do ordain and establish this Constitution for the Confederated Tribes of the Flathead Reservation.

## ARTICLE I—TERRITORY

The jurisdiction of the Confederated Salish and Kootenai Tribes of Indians shall extend to the territory within the original confines of the Flathead Reservation as defined in the Treaty of July 16, 1855, and to such other lands without such boundaries, as may hereafter be added thereto under any law of the United States, except as otherwise provided by law.

## ARTICLE II—MEMBERSHIP

SECTION 1. The membership of the Confederated Tribes of the Flathead Reservation shall consist as follows:

(a) All persons of Indian blood whose names appear on the official census rolls of the Confederated Tribes as of January 1, 1935.

(b) All children born to any member of the Confederated Salish and Kootenai Tribes of the Flathead Reservation who is a resident of the reservation at the time of the birth of said children.

SECTION 2. The Council shall have the power to propose ordinances, subject to review by the Secretary of the Interior, governing future membership and the adoption of members by the Confederated Tribes.

SECTION 3. No property rights shall be acquired or lost through membership in this organization, except as provided herein.

## ARTICLE III—THE TRIBAL COUNCIL

SECTION 1. The governing body of the Confederated Salish and Kootenai Tribes of the Flathead Reservation shall be the Tribal Council.

SECTION 2. The Council shall consist of ten councilmen to be elected from the districts as set forth hereafter, and Chiefs Martin Charlo and Eneas Paul Koostahtah.

SECTION 3. Representation from the districts hereby designated shall be as follows: Jocko Valley and Mission Districts, two council-

men each; Ronan, Pablo, Polson, Elmo-Dayton, Hot Springs-Camas Prairie, and Dixon, one councilman each.

SECTION 4. The Tribal Council shall have the power to change the districts and the representation from each district, based on community organization or otherwise, as deemed advisable, such change to be made by ordinance, but the total number of delegates shall not be changed as provided for in section 2 of article III of this Constitution.

SECTION 5. The Tribal Council so organized shall elect from within its own number a chairman, and a vice chairman, and from within or without its own membership, a secretary, treasurer, sergeant-at-arms, and such other officers and committees as may be deemed necessary.

SECTION 6. No person shall be a candidate for membership in the Tribal Council unless he shall be a member of the Confederated Tribes of the Flathead Reservation and shall have resided in the district of his candidacy for a period of one year next preceding the election.

SECTION 7. The Tribal Council of the Confederated Tribes of the Flathead Reservation shall be the sole judge of the qualifications of its members.

## ARTICLE IV—NOMINATIONS AND ELECTIONS

SECTION 1. The first election of a Tribal Council under this Constitution shall be called and supervised by the present Tribal Council within 30 days after the ratification and approval of this Constitution, and thereafter elections shall be held every two years on the third Saturday prior to the expiration of the terms of office of the members of the Tribal Council. At the first election, five councilmen shall be elected for a period of two years and five for a period of four years. The term of office of a councilman shall be for a period of four years unless otherwise provided herein.

SECTION 2. The Tribal Council or an election board appointed by the Council shall determine rules and regulations governing all elections.

SECTION 3. Any qualified member of the Confederated Tribes may announce his candidacy for the Council, within the district of his residence, notifying the Secretary of the Tribal Council in writing of his candidacy at least 15 days prior to the election. It shall be the duty of the Secretary of the Tribal Council to post in each district at least 10 days before the election, the names of all candidates for the Council who have met these requirements.

SECTION 4. The Tribal Council, or a board appointed by the Council, shall certify to the election of the members of the Council within 5 days after the election returns.

SECTION 5. Any member of the Confederated Tribes of the Flathead Reservation who is 21 years of age or over and who has maintained a legal residence for at least one year on the Flathead Reservation shall be entitled to vote.

SECTION 6. The Tribal Council, or a board appointed by the Tribal Council, shall designate the polling places and appoint all elec-

## Article V—Vacancies and Removal from Office

Section 1. If a councilman or official shall die, resign, permanently leave the reservation, or be removed from office, the Council shall declare the position vacant and appoint a successor to fill the unexpired term, *provided* that the person chosen to fill such vacancy shall be from the district in which such vacancy occurs.

Section 2. Any councilman who is proven guilty of improper conduct or gross neglect of duty may be expelled from the Council by a two-thirds vote of the membership of the Council voting in favor of such expulsion, and *provided further*, that the accused member shall be given full and fair opportunity to reply to any and all charges at a designated Council meeting. It is further stipulated that any such member shall be given a written statement of the charges against him at least five days before the meeting at which he is to appear.

## Article VI—Powers and Duties of the Tribal Council

Section 1. The Tribal Council shall have the power, subject to any limitations imposed by the Statutes or the Constitution of the United States, and subject to all express restrictions upon such powers contained in this Constitution and attached Bylaws;

(a) To regulate the uses and disposition of tribal property, to protect and preserve the tribal property, wildlife and natural resources of the Confederated Tribes, to cultivate Indian arts, crafts, and culture, to administer charity; to protect the health, security, and general welfare of the Confederated Tribes.

(b) To employ legal counsel for the protection and advancement of the rights of the Flathead Confederated Tribes and their members, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior.

(c) To negotiate with the Federal, State, and local governments on behalf of the Confederated Tribes, and to advise and consult with the representatives of the Departments of the Government of the United States on all matters affecting the affairs of the Confederated Tribes.

(d) To approve or veto any sale, disposition, lease, or encumbrance of tribal lands and tribal assets which may be authorized or executed by the Secretary of the Interior, the Commissioner of Indian Affairs, or any other agency of the Government, *provided* that no tribal lands shall be sold or encumbered or leased for a period in excess of five years, except for Governmental purposes.

(e) To advise with the Secretary of the Interior with regard to all appropriation estimates or Federal projects for the benefit of the Confederated Tribes, prior to the submission of such estimates to the Congress.

(f) To manage all economic affairs and enterprises of the Confederated Tribes in accordance with the terms of a charter to be issued by the Secretary of the Interior.

(g) To make assignments of tribal lands to members of the Confederated Tribes in conformity with article VIII of this Constitution.

Amended See p.13-14

(h) To appropriate for tribal use of the reservation any available applicable tribal funds, provided that any such appropriation may be subject to review by the Secretary of the Interior, and *provided, further*, that any appropriation in excess of $5,000 in any one fiscal year shall be of no effect until approved in a popular referendum.

(i) To promulgate and enforce ordinances, subject to review by the Secretary of the Interior, which would provide for assessments or license fees upon nonmembers doing business within the reservation, or obtaining special rights or privileges, and the same may also be applied to members of the Confederated Tribes, provided such ordinances have been approved by a referendum of the Confederated Tribes.

(j) To exclude from the restricted lands of the reservation persons not legally entitled to reside thereon, under ordinances which may be subject to review by the Secretary of the Interior.

(k) To enact resolutions or ordinances not inconsistent with article II of this Constitution governing adoptions and abandonment of membership.

(l) To promulgate and enforce ordinances which shall be subject to review by the Secretary of the Interior, governing the conduct of members of the Confederated Tribes, and providing for the maintenance of law and order and the administration of justice by the establishment of an Indian Court, and defining its powers and duties.

(m) To purchase land of members of the Confederated Tribes for public purposes under condemnation proceedings in courts of competent jurisdiction.

(n) To promulgate and enforce ordinances which are intended to safeguard and promote the peace, safety, morals, and general welfare of the Confederated Tribes by regulating the conduct of trade and the use and disposition of property upon the reservation, providing that any ordinance directly affecting nonmembers shall be subject to review by the Secretary of the Interior.

(o) To charter subordinate organizations for economic purposes and to regulate the activities of all cooperative and other associations which may be organized under any charter issued under this Constitution.

(p) To regulate the inheritance of real and personal property, other than allotted lands, within the Flathead Reservation, subject to review by the Secretary of the Interior.

(q) To regulate the domestic relations of members of the Confederated Tribes.

(r) To recommend and provide for the appointment of guardians for orphans, minor members of the Confederated Tribes, and incompetents subject to the approval of the Secretary of the Interior, and to administer tribal and other funds or property which may be transferred or entrusted to the Confederated Tribes or Tribal Council for this purpose.

(s) To create and maintain a tribal fund by accepting grants or donations from any person, State, or the United States.

(t) To delegate to subordinate boards or to cooperative associations which are open to all members of the Confederated Tribes, any

of the foregoing powers, reserving the right to review any action taken by virtue of such delegated power.

(u) To adopt resolutions or ordinances to effectuate any of the foregoing powers.

SECTION 2. Any resolution or ordinance which by the terms of this constitution is subject to review by the Secretary of the Interior, shall be presented to the Superintendent of the Reservation who shall, within ten days thereafter, approve or disapprove the same, and if such ordinance or resolution is approved, it shall thereupon become effective, but the Superintendent shall transmit a copy of the same, bearing his endorsement, to the Secretary of the Interior who may, within 90 days from the date of enactment, rescind said ordinance or resolution for any cause, by notifying the Council of such action: *Provided*, That if the Superintendent shall refuse to approve any resolution or ordinance submitted to him, within ten days after its enactment, he shall advise the Council of his reasons therefor, and the Council, if such reasons appear to be insufficient, may refer it to the Secretary of the Interior, who may pass upon same and either approve or disapprove it within 90 days from its enactment.

SECTION 3. The council of the Confederated Tribes may exercise such further powers as may in the future be delegated to it by the Federal Government, either through order of the Secretary of the Interior or by Congress, or by the State Government or by members of the Confederated Tribes.

SECTION 4. Any rights and powers heretofore vested in the Confederated Tribes but not expressly referred to in this Constitution shall not be abridged by this article, but may be exercised by the members of the Confederated Tribes through the adoption of appropriate bylaws and constitutional amendments.

## ARTICLE VII—BILL OF RIGHTS

SECTION 1. All members of the Confederated Tribes over the age of 21 years shall have the right to vote in all tribal elections, subject to any restrictions as to residence as set forth in article IV.

SECTION 2. All members of the Confederated Tribes shall be accorded equal opportunities to participate in the economic resources and activities of the reservation.

SECTION 3. All members of the Confederated Tribes may enjoy without hindrance freedom of worship, speech, press, and assembly.

SECTION 4. Any member of the Confederated Tribes accused of any offense, shall have the right to a prompt, open, and public hearing, with due notice of the offense charged, and shall be permitted to summon witnesses in his own behalf and trial by jury shall be accorded, when duly requested, by any member accused of any offense punishable by more than 30 days' imprisonment, and excessive bail or cruel or unusual punishment shall not be imposed.

## ARTICLE VIII—LAND

SECTION 1. *Allotted lands.*—Allotted lands, including heirship lands, within the Flathead Reservation, shall continue to be held as

dian to hold or to part with his land, as under existing law, shall not be abrogated by anything contained in this Constitution, but the owner of restricted land may, with the approval of the Secretary of the Interior, voluntarily convey his land to the Confederated Tribes either in exchange for a money payment or in exchange for an assignment covering the same land or other land, as hereinafter provided.

The Tribal Council shall have the right to exchange tribal lands for individual allotments when necessary for consolidation of tribal holdings and subject to approval of the Secretary of the Interior. Such exchanges shall be based on the appraised value of the lands so exchanged, and the individual Indian shall hold the land so exhanged in the same manner as the original allotment.

SECTION 2. *Tribal lands.*—The unallotted lands of the Flathead Reservation, and all lands which may hereafter be acquired by the Flathead Confederated Tribes or by the United States in trust for the Flathead Confederated Tribes, shall be held as tribal land, and no part of such land shall be mortgaged or sold. Tribal lands shall not be allotted to individuals but may be assigned to members of the Confederated Tribes, or leased, or otherwise used by the Confederated Tribes as hereinafter provided.

SECTION 3. *Leasing of tribal lands.*—Tribal lands may be leased by the Tribal Council, with the approval of the Secretary of the Interior, for such periods of time as are permitted by law.

In the leasing of tribal lands preference shall be given, first, to Indian cooperative associations, and, secondly, to individual Indians who are members of the Confederated Tribes. No lease of tribal land to a nonmember shall be made by the Tribal Council unless it shall appear that no Indian cooperative association or individual member of the Confederated Tribes is able and willing to use the land and to pay a reasonable fee for such use.

Grazing permits covering tribal land may be issued by the Tribal Council, with the approval of the Secretary of the Interior, in the same manner and upon the same terms as leases.

SECTION 4. *Grants of standard assignments.*—In any assignment of tribal lands which now are owned by the Confederated Tribes or which may hereafter be acquired for the Confederated Tribes by the United States, or purchased by the Confederated Tribes out of tribal funds, preference shall be given, first, to heads of families which are entirely landless, and, secondly, to heads of families which have no allotted lands or interests in allotted lands but shall have already received assignments consisting of less than 80 acres of agricultural land, or other land or interest in land of equal value.

No allotted member of the Confederated Tribes who may hereafter have the restrictions upon his land removed and whose land may thereafter be alienated shall be entitled to receive an assignment of lands as a landless Indian.

Assignments made under this section shall be for the primary purpose of establishing homes for landless Indians, and shall be known as "Standard Assignments."

The Tribal Council may, if it seems fit, charge a fee of not to exceed $5.00 on approval of an assignment of land made under this section

SECTION 5. *Tenure of standard assignments.*—If any member of the Confederated Tribes holding a standard assignment of land shall, for a period of one year, fail to use the land so assigned, or shall use such land for any unlawful purposes, his assignment may be canceled by the Tribal Council after he has had due notice and an opportunity to be heard, and the said land may be reassigned in accordance with the provisions of section 4 of this article.

Upon the death of any Indian holding a "Standard Assignment", his heirs, or other individuals designated by him by will or by written request, shall have a preference in the reassignment of the land, provided such persons are members of the Confederated Tribes who would be eligible to receive a "Standard Assignment."

SECTION 6. *Grant of exchange assignment.*—Any member of the Confederated Tribes who owns an allotment or any share of heirship land, or any unencumbered deeded land within the reservations, may voluntarily transfer his interest in such land to the Confederated Tribes in exchange for an assignment to the same land or to other lands of equal value. If the assignee prefers, he may receive, in lieu of a specific tract of land, a proportionate share in a larger grazing unit.

Assignments made under this section shall be known as "Exchange Assignments."

SECTION 7. *Leasing of exchange assignments.*—Exchange assignments may be used by the assignee or leased by him to Indian cooperative associations, to individual members of the Confederated Tribes, or, if no individual Indian or Indian cooperative association is able and willing to rent the land at a reasonable fee, such assignments may be leased to non-Indians in the same manner as allotted lands.

SECTION 8. *Inheritance of exchange assignments.*—Upon the death of the holder of any exchange assignment, such land shall be reassigned by the Tribal Council to his heirs or devisees, subject to the following conditions:

(a) Such lands may not be reassigned to any heirs or devisees who are not members of the Confederated Tribes, except that a life assignment may be made to the surviving widower or widow of the holder of an assignment.

(b) Such lands may not be reassigned to any heir or devisee who already holds more than 320 acres of grazing land, or other land or interests in lands of equal value, either under allotment or under assignment.

(c) Such lands may not be subdivided into units smaller than 160 acres, and no area of agricultural land shall be subdivided into units smaller than two and one-half acres, except that land used for buildings or other improvements may be divided to suit the convenience of the parties. Where it is impossible to divide the land properly among the eligible heirs or devisees, the Tribal Council shall issue to the eligible heirs or devisees, grazing permits or other interest in tribal lands of the same value as the assignment of the decedent.

(d) If there are no eligible heirs or devisees of the decedent, the land shall be eligible for reassignment in accordance with the provisions of Section 4 of this Article.

SECTION 9. *Inheritance of improvements.*—Improvements of any character made upon assigned land may be bequeathed to and inherited by members of the Confederated Tribes, or otherwise disposed of under such regulations as the Tribal Council shall provide. No permanent improvements shall be removed from the land without the consent of the Tribal Council.

SECTION 10. *Exchange of assignments.*—Assignments may be exchanged between members of the Confederated Tribes by common consent in such manner as the Tribal Council shall designate.

(a) *Use of unassigned community land.*—Community land which is not assigned, including community timber reserves, shall be managed by the community council for the benefit of the members of the entire community, and any cash income derived from such land shall accrue to the benefit of the community as a whole.

SECTION 11. *Purchase of land by community.*—Tribal funds may be used, with the consent of the Secretary of the Interior, to acquire land under the following conditions:

(a) Land within the Flathead Reservation, or adjacent to the boundaries thereof which is not now in Indian ownership, may be purchased by or for the Confederated Tribes.

(b) Restricted land which is in heirship status at the time of the adoption and approval of this Constitution may be purchased by or for the Confederated Tribes with the consent of all the adult heirs, and the legal guardians of minor heirs, or incompetent heirs, payment therefor to be made as may be agreed upon.

(c) Land owned by any member of the Confederated Tribes who is over the age of 60 years, or who is physically incapacitated, may be transferred by its owner to the Confederated Tribes in exchange for a pension or not more than twice the annual rental value of the land for the life of the pensioner, to be paid out of available tribal funds.

(d) Land in excess of 320 acres owned by any member of the Confederated Tribes, with the consent of the owner, payments to be made under such terms as may be agreed upon.

(e) Land owned by any member of the Confederated Tribes who desires to leave the reservation permanently may be purchased by the Confederated Tribes, under such terms as may be agreed upon.

SECTION 12. *Method of making assignments.*—Applications for assignments shall be filed with the Secretary of the Council and shall be in writing, setting forth the name of the person or persons applying for the land and as accurate a description of the land desired as the circumstances will permit. Notices of all applications received by the Secretary shall be posted by him in the agency office and in at least three conspicuous places in the district in which the land is located, for not less than 20 days before action is taken by the Council.

Any member of the Confederated Tribes wishing to oppose the granting of an assignment shall do so in writing, setting forth his objections, to be filed with the Secretary of the Council, and may, if he so desires, appear before the Council to present evidence. The Secretary of the Council shall furnish the Superintendent or other officer in charge of the agency a complete record of all action taken by the Council on the application for assignment of land, and

a complete record of assignments shall be kept in the agency office and shall be open for inspection by all members of the Confederated Tribes.

The Council shall draw up one or more forms for standard and exchange assignments, which shall be subject to the approval of the Secretary of the Interior.

### Article IX—Referendum

Section 1. Upon a petition of at least one-third (⅓) of the eligible voters of the Confederated Tribes, or upon the request of a majority of the members of the Tribal Council, any enacted or proposed ordinance or resolution of the Council shall be submitted to a popular referendum, and the vote of a majority of the qualified voters voting in such referendum shall be conclusive and binding on the Tribal Council, provided that at least thirty percent (30%) of the eligible voters shall vote in such election.

### Aticle X—Amendments

Section 1. This Constitution and Bylaws may be amended by a majority vote of the qualified voters of the Confederated Tribes voting at an election called for that purpose by the Secretary of the Interior, provided that at least thirty percent (30%) of those entitled to vote shall vote in such election; but no amendment shall become effective until it shall have been approved by the Secretary of the Interior. It shall be the duty of the Secretary of the Interior to call an election on any proposed amendment, at the request of two-thirds of the Council, or upon presentation of a petition signed by one-third (⅓) of the qualified voters, members of the Confederated Tribes.

## BYLAWS

### Article I—The Tribal Council

Section 1. The Chairman of the Council shall preside over all meetings of the Council, perform all duties of chairman, and exercise any authority detailed to him, and he shall be entitled to vote on all questions.

Section 2. The vice chairman shall assist the chairman when called on so to do, in the absence of the chairman shall preside, and when so presiding shall have all the privileges, duties, and responsibilities of the chairman.

Section 3. The Council secretary shall forward a copy of the minutes of all meetings to the Superintendent of the Reservation and to the Commissioner of Indian Affairs.

Section 4. The duties of all appointed boards or officers of the organization shall be clearly defined by resolutions of the Council at the time of their creation or appointment. Such boards and officers shall report from time to time as required to the Council and their activities and decisions shall be subject to review by the Council upon petition of any person aggrieved.

Section 5. Newly elected members who have been duly certified shall be installed at the first regular meeting of the Tribal Council.

SECTION 6. Each member of the Tribal Council and each officer or subordinate officer, elected or appointed hereunder, shall take an oath of office prior to assuming the duties thereof, by which oath, he shall pledge himself to support and defend the Constitution of the United States and this Constitution and Bylaws. The following form of oath of office shall be given: "I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, to carry out faithfully and impartially, the duties of my office to the best of my ability; to cooperate, promote, and protect the best interests of my Tribe, in accordance with this Constitution and Bylaws."

SECTION 7. Regular meetings of the Tribal Council shall be held on the first Saturdays of January, April, July, and October, at 9:00 o'clock a. m., at the Flathead Agency.

SECTION 8. Special meetings may be called by a written notice signed by the chairman or a majority of the Tribal Council and when so called the Tribal Council shall have power to transact business as in regular meetings.

SECTION 9. No business shall be transacted unless a quorum is present which shall consist of two-thirds (⅔) of the entire membership.

SECTION 10. Order of business:

(a) Call to order by chairman.
(b) Roll call.
(c) Reading of minutes of last meeting.
(d) Unfinished business.
(e) Reports.
(f) New business.
(g) Adjournment.

SECTION 11. It shall be the duty of each member of the Tribal Council to make reports to the district from which he is elected, concerning the proceedings of the Tribal Council.

SECTION 12. The Tribal Council may prescribe such salaries for officers or members of the Council as it deems advisable, from such funds as may be available.

## ARTICLE II—ORDINANCES AND RESOLUTIONS

SECTION 1. All final decisions of the Council on matters of general and permanent interest to the members of the Confederated Tribes shall be embodied in ordinances. Such ordinances shall be published from time to time for the information and education of the members of the Confederated Tribes.

SECTION 2. All final decisions of the Council on matters of temporary interest (such as action on the reservation budget for a single year, or petitions to Congress or the Secretary of the Interior) or relating especially to particular individuals or officials (such as adoption of members, instructions for tribal employees or rules of order for the Council) shall be embodied in resolutions. Such resolutions shall be recorded in a special book which shall be open to inspection by members of the Confederated Tribes.

SECTION 3. All questions of procedure (such as acceptance of [illegible] shall be

decided by action of the Council or by ruling of the Chairman, if no objection is heard.

In all ordinances, resolutions or motions the Council may act by majority vote, but all matters of importance shall be fully discussed and a reasonable attempt shall be made to secure unanimous agreement.

SECTION 4. *Legislative forms.*—Every ordinance shall begin with the words: "Be it enacted by the Council of the Confederated Salish and Kootenai Tribes—."

SECTION 5. Every resolution shall begin with the words: "Be it resolved by the Council of the Confederated Salish and Kootenai Tribes—."

SECTION 6. Every ordinance or resolution shall contain a recital of the laws of the United States and the provisions of this Constitution under which authority for the said ordinance or resolution is found.

## ARTICLE III—RATIFICATION OF CONSTITUTION AND BYLAWS

This Constitution and the attached Bylaws, when adopted by a majority vote of the voters of the Confederated Tribes voting at a special election called by the Secretary of the Interior, in which at least thirty (30) percent of those entitled to vote shall vote, shall be submitted to the Secretary of the Interior for his approval, and shall be in force from the date of such approval.

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## CERTIFICATE OF ADOPTION

Pursuant to an order, approved September 25, 1935, by the Secretary of the Interior, the attached Constitution and Bylaws were submitted for ratification to the members of the Confederated Salish and Kootenai Tribes of the Flathead Reservation and were on October 4, 1935, duly adopted by a majority vote of the members of said voting in an election in which over 30 percent of those entitled to vote cast their ballots, in accordance with section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the act of June 14, 1935 (Pub., No. 147, 74th Cong.).

ROY E. COURVILLE,
*Chairman of Election Board.*

JOSEPH R. BLODGETT,
*President of Tribal Council.*

LUMAN W. SHOTWELL,
*Superintendent and ex officio*
*Secretary of the Tribal Council.*

MARTIN (his thumb mark) CHARLO,
*Chief Confederated Salish Tribe.*

PAUL (his thumb mark) KOOS TA-TA,
*Chief Kootenai Tribe.*

Witnesses to mark:
HENRY MATT.
NICOLAI LASSAW.

I, Harold I. Ickes, the Secretary of the Interior of the United States of America, by virtue of the authority granted me by the act of June 18, 1934 (48 Stat. 984), as amended, do hereby approve the attached Constitution and Bylaws of the Confederated Salish and Kootenai Tribes of the Flathead Reservation.

All rules and regulations heretofore promulgated by the Interior Department or by the Office of Indian Affairs, so far as they may be incompatible with any of the provisions of the said Constitution or Bylaws are hereby declared inapplicable to the Confederated Salish and Kootenai Tribes of the Flathead Reservation.

All officers and employees of the Interior Department are ordered to abide by the provisions of the said Constitution and Bylaws.

Approval recommended October 26, 1935.

JOHN COLLIER,
*Commissioner of Indian Affairs.*

HAROLD L. ICKES,
*Secretary of the Interior.*
[SEAL]

WASHINGTON, D. C.,
*October 28, 1935.*

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# AMENDMENT TO THE CONSTITUTION AND BY-LAWS OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION, MONTANA

AMENDMENT I.

Article VI, Section 1 (h) of the Constitution and By-laws of the Confederated Salish and Kootenai Tribes shall be amended to read as follows:

SECTION 1. The Tribal Council shall have the power, subject to any limitations imposed by the Statutes or the Constitution of the United States, and subject to all express restrictions upon such powers contained in this Constitution and attached By-laws;

(h) To appropriate for tribal use of the reservation any available applicable funds in the tribal treasury, provided that any such appropriation in excess of $25,000 shall be subject to review by the Secretary of the Interior.

## CERTIFICATION OF ADOPTION

Pursuant to an order approved October 14, 1948, by the Assistant Secretary of the Interior, the attached Amendment I to the Constitution and By-laws of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, was submitted for ratification to the Indians of the Flathead Reservation and was on December 10, 1948, duly adopted by a vote of 405 for, and 201 against, in an election in which over thirty percent of those entitled to vote cast their ballots, in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378).

WALTER W. MCDONALD,
*Chairman, Confederated Salish & Kootenai Tribal Council.*

PHIL HAMEL,
*Secretary, Confederated Salish & Kootenai Tribal Council.*

C. C. WRIGHT,
*Superintendent, Conf. Salish & Kootenai Tribes.*

APPROVAL

I, William E. Warne, Assistant Secretary of the Interior of the United States of America, by virtue of the authority granted me by the Act of June 18, 1934 (48 Stat. 984), as amended, do hereby approve Amendment I to the Constitution and By-laws of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana.

Approval recommended: December 21, 1948.

JOHN H. PROVINSE,
*Assistant Commissioner.*

WILLIAM E. WARNE,
*Assistant Secretary of the Interior.*

WASHINGTON, D. C., *December 22, 1948.*

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UNITED STATES

DEPARTMENT OF THE INTERIOR

OFFICE OF INDIAN AFFAIRS

+

# CORPORATE CHARTER OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION MONTANA

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RATIFIED APRIL 25, 1936

UNITED STATES

GOVERNMENT PRINTING OFFICE

WASHINGTON : 1936

# CORPORATE CHARTER OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION

## A FEDERAL CORPORATION CHARTERED UNDER THE ACT OF JUNE 18, 1934

Whereas, the Confederated Salish and Kootenai Tribes of the Flathead Reservation in Montana constitute a recognized Indian tribe organized under a constitution and bylaws ratified by the tribe on October 4, 1935, and approved by the Secretary of the Interior on October 28, 1935, pursuant to section 16 of the act of June 18, 1934 (48 Stat. 984), as amended by the act of June 15, 1935 (49 Stat. 378); and

Whereas, more than one-third of the adult members of the tribe have petitioned that a charter of incorporation be granted to such tribe, subject to ratification by a vote of the adult Indians living on the reservation;

Now, therefore, I, Harold L. Ickes, Secretary of the Interior, by virtue of the authority conferred upon me by the said act of June 18, 1934 (48 Stat. 984), do hereby issue and submit this charter of incorporation to the Confederated Salish and Kootenai Tribes of the Flathead Reservation to be effective from and after such time as it may be ratified by a majority vote of the adult Indians living on the reservation.

*Corporate Existence.*

1. In order to further the economic development of the Confederated Salish and Kootenai Tribes of the Flathead Reservation in Montana by conferring upon the said tribe certain corporate rights, powers, privileges, and immunities; to secure for the members of the tribe an assured economic independence; and to provide for the proper exercise by the tribe of various functions heretofore performed by the Department of the Interior, the aforesaid tribe is hereby chartered as a body politic and corporate of the United States of America, under the corporate name "The Confederated Salish and Kootenai Tribes of the Flathead Reservation."

*Perpetual Succession.*

2. The Confederated Salish and Kootenai Tribes shall, as a Federal corporation, have perpetual succession.

*Membership.*

3. The Confederated Salish and Kootenai Tribes shall be a membership corporation. Its members shall consist of all persons now or hereafter members of the tribe, as provided by its duly ratified and approved constitution and bylaws.

*Management.*

4. The tribal council of the Confederated Tribes established in accordance with the said constitution and bylaws of the tribe, shall exercise all the corporate powers hereinafter enumerated.

*Corporate Powers.*

5. The tribe, subject to any restrictions contained in the Constitution and laws of the United States, or in the constitution and bylaws of the said tribe, shall have the following corporate powers, in addition to all powers already conferred or guaranteed by the tribal constitution and bylaws:

(*a*) To adopt, use, and alter at its pleasure a corporate seal.

(*b*) To purchase, take by gift, bequest, or otherwise, own, hold, manage, operate, and dispose of property of every description, real and personal, subject to the following limitations:

1. No sale or mortgage may be made by the tribe of any land, or interests in land, including water power sites, water rights, oil, gas, and other mineral rights, now or hereafter held by the tribe within the boundaries of the Flathead Reservation.
2. No mortgage may be made by the tribe of any standing timber on any land now or hereafter held by the tribe within the boundaries of the Flathead Reservation.
3. No leases, permits (which terms shall not include land assignments to members of the tribe), or timber-sale contracts covering any land or interests in land now or hereafter held by the tribe within the boundaries of the Flathead Reservation shall be made by the tribe for a longer term than 10 years, and all such leases, permits, or contracts must be approved by the Secretary of the Interior or by his duly authorized representative; but oil and gas leases, water power leases, or any leases requiring substantial improvements of the land may be made for longer periods when authorized by law.
4. No action shall be taken by or in behalf of the tribe which conflicts with regulations authorized by section 6 of the act of June 18, 1934, or in any way operates to destroy or injure the tribal grazing lands, timber, or other natural resources of the Flathead Reservation.
5. No distribution of corporate property to members shall be made except out of net income.

(*c*) To issue interests in corporate property in exchange for restricted Indian lands.

(*d*) To borrow money from the Indian credit fund in accordance with the terms of section 10 of the act of June 18, 1934 (48 Stat. 984), or from any other governmental agency, or from any member or association of members of the tribe, and to use such funds directly for productive tribal enterprises, or to loan money thus borrowed to individual members or associations of members of the tribe: *Provided*, That the amount of indebtedness to which the tribe may subject itself shall not exceed $100,000, except with the express approval of the Secretary of the Interior.

(*e*) To engage in any business that will further the economic well-being of the members of the tribe or to undertake any activity of any nature whatever, not inconsistent with law or with any provisions of this charter.

(*f*) To make and perform contracts and agreements of every description, not inconsistent with law or with any provisions of this charter, with any person, association, or corporation, with any municipality or any county, or with the United States or the State of Montana, including agreements with the State of Montana for the rendition of public services and including contracts with the United States or the State of Montana or any agency of either for the development of water-power sites within the reservation: *Provided*, That all contracts involving payment of money by the corporation in excess of $5,000 in any one fiscal year, or involving the development of water-power sites within the reservation, shall be subject to the approval of the Secretary of the Interior or his duly authorized representative.

(*g*) To pledge or assign chattels or future tribal income due or to become due to the tribe under any notes, leases, or other contracts, whether or not such notes, leases, or contracts are in existence at the time: *Provided*, That such agreements of pledge or assignment shall not extend more than 10 years from the date of execution and shall not cover more than one-half the net tribal income in any 1 year: *And provided further*, That any such agreement shall be subject to the approval of the Secretary of the Interior or his duly authorized representative.

(*h*) To deposit corporate funds from whatever

to the extent that such funds are insured by the Federal Deposit Insurance Corporation, or secured by a surety bond, or other security, approved by the Secretary of the Interior; or to deposit such funds in the postal savings bank or with a bonded disbursing officer of the United States to the credit of the tribe.

(*i*) To sue and to be sued in courts of competent jurisdiction within the United States; but the grant or exercise of such power to sue and to be sued shall not be deemed a consent by the said tribe or by the United States to the levy of any judgment, lien, or attachment upon the property of the tribe other than income or chattels specially pledged or assigned.

(*j*) To exercise such further incidental powers, not inconsistent with law, as may be necessary to the conduct of corporate business.

*Termination of Supervisory Powers.*

6. At any time after 10 years from the effective date of this charter, upon the request of the tribal council of the Confederated Tribes for the termination of any supervisory power reserved to the Secretary of the Interior under sections 5b (3), 5d, 5f, 5g, 5h, and section 8 of this charter, the Secretary of the Interior, if he deems it wise and expedient so to do, shall thereupon submit the question of such termination or grant for ratification by the tribe. If the Secretary of the Interior shall approve such termination, it shall be effective upon ratification by a majority vote of the adult members of the tribe residing on the reservation, at an election in which at least 30 percent of the eligible voters vote. If the Secretary shall disapprove such termination, or fail to approve or disapprove it within 90 days after its receipt, it may then be submitted by the Secretary or by the tribal council to popular referendum of the adult members of the tribe actually living within the reservation, and if approved by two-thirds of the eligible voters shall be effective.

*Corporate Property.*

7. No property rights of the Confederated Salish and Kootenai Tribes, as heretofore constituted, shall be in any way impaired by anything contained in this charter, and the tribal ownership of unallotted lands, whether or not assigned to the use of any particular individuals, is hereby expressly recognized. The individually owned property of members of the tribe shall not be subject to any corporate debts or liabilities, without such owners' consent. Any existing lawful debts of the tribe shall continue in force, except as such debts may be satisfied or cancelled pursuant to law.

*Corporate Dividends.*

8. The tribe may issue to each of its members a nontransferable certificate of membership evidencing the equal share of each member in the assets of the tribe and may distribute per capita, among the recognized members of the tribe, all profits of corporate enterprises over and above sums necessary to defray corporate obligations to members of the tribe or to other persons and over and above all sums which may be devoted to the establishment of a reserve fund, the construction of public works, the costs of public enterprises, the expenses of tribal government, the needs of charity, or other corporate purpose. Any such distribution of profits in any 1 year amounting to a per capita cash payment of $100 or more, or amounting to a distribution of more than one-half of the accrued surplus, shall not be made without the approval of the Secretary of the Interior.

*Corporate Accounts.*

9. The officers of the tribe shall maintain accurate and complete public accounts of the financial affairs of the tribe, which shall clearly show all credits, debts, pledges, and assignments, and shall furnish an annual balance sheet and report of the financial affairs of the tribe to the Commissioner of Indian Affairs. The treasurer of the tribe shall be the custodian of all moneys which come under the jurisdiction or control of the tribal council. He shall pay out money in accordance with the orders and resolutions of the council, and no disbursements shall be made without the signature or approval of the treasurer. He shall keep accounts of all receipts and disbursements and shall make written reports of same to the tribal council at each regular and special meeting. He shall be bonded in such an amount as the council by resolution shall provide, such bond to be approved by the Commissioner of Indian Affairs. The books of the treasurer shall be audited at the direction of the council or of the Commissioner of Indian Affairs, and shall be open to inspection by members of the tribe or duly authorized representatives of the Government at all reasonable times.

*Amendments.*

10. This charter shall not be revoked or surrendered except by act of Congress, but amendments may be proposed by resolutions of the council which, if approved by the Secretary of the Interior, to be effective shall be ratified by a majority vote of the adult members living on the reservation at a popular referendum in which at least 30 percent of the eligible voters vote.

*Ratification.*

11. This charter shall be effective from and after the date of its ratification by a majority vote of the adult members of the Confederated Salish and Kootenai Tribes living on the Flathead Reservation,

provided at least 30 percent of the eligible voters shall vote, such ratification to be formally certified by the superintendent of the Flathead Agency and the chairman of the tribal council of the Confederated Tribes.

Submitted by the Secretary of the Interior for ratification by the Confederated Salish and Kootenai Tribes of the Flathead Reservation in a popular referendum to be held on April 25, 1936.

T. A. WALTERS,
*Acting Secretary of the Interior.*

[SEAL]

WASHINGTON, D. C., *April 21, 1936.*

CERTIFICATION

Pursuant to section 17 of the act of June 18, 1934 (48 Stat. 984), this charter, issued on April 21, 1936, by the Secretary of the Interior to the Confederated Salish and Kootenai Tribes of the Flathead Reservation, was duly submitted for ratification to the adult Indians living on the reservation and was on April 25, 1936, duly ratified by a vote of 425 for and 129 against, in an election in which over 30 percent of those entitled to vote cast their ballots.

EDWIN DUPUIS,
*Chairman of the Tribal Council.*

L. W. SHOTWELL,
*Superintendent, Flathead Agency.*

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5/5/1960



CONSTITUTION AND BYLAWS
of the
SALISH AND KOOTENAI TRIBES
of the
FLATHEAD RESERVATION
MONTANA

Amendment II

Article II of the Constitution entitled "Membership" is hereby amended in its entirety to read as follows:

"Section 1. Confirmation of Rolls - The membership of the Confederated Tribes of the Flathead Reservation is confirmed in accordance with the per capita rolls as from time to time prepared.

"Section 2. Present Membership - Membership in the Tribes on and after the date of the adoption of this amendment shall consist of all living persons whose names appear on the per capita roll of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, as prepared for the per capita distribution as shown on the per capita roll paid in February 1959 together with all children of such members, born too late to be included on such per capita roll and prior to the effective date of this section who possess one-fourth (1/4) or more Salish or Kootenai blood or both and are born to a member of the Confederated Tribes of the Flathead Indian Reservation. Subject to review by the Secretary of the Interior, the Tribal Council shall make any necessary corrections in this 1959 membership roll so that no one eligible for membership under prior constitutional provisions shall be excluded therefrom.

1/4 → BLOOD PURITY LINEAGE

RACISM

"Section 3. Future Membership - Future membership may be regulated from time to time by ordinance of the Confederated Tribes subject to review by the Secretary of the Interior. Until and unless an ordinance is adopted any person shall be enrolled as a member who shall (a) apply, or have application made on his behalf, establishing eligibility under this provision; (b) show that he is a natural child of a member of the Confederated Tribes; (c) that he possesses one-quarter (1/4) degree or more blood of the Salish or Kootenai Tribes or both, of the Flathead Indian Reservation, Montana; (d) is not enrolled on some other reservation.

1/4 BLOOD →

"Section 4. Adoption - The Tribal Council shall have the power to enact and promulgate ordinances, subject to review by the Secretary of the Interior, governing the adoption of persons as members of the Confederated Salish and Kootenai Tribes.

"Section 5. Loss of Membership - Membership in the Confederated Tribes may be lost (1) by resignation in writing to the Tribal Council; (2) by enrollment of the member with another Indian tribe; (3) by establishing a legal residence in a foreign country; (4) upon proof of lack of eligibility for enrollment, or fraud in obtaining enrollment, with due notice and opportunity to be heard and to defend before the Tribal Council, subject to appeal to the Secretary of the Interior, whose decision shall be confined to the record made in such proceeding which, if supported by substantial evidence, shall be binding.

"Section 6. Definitions - Wherever the term "Indian Blood" shall have been used herein or in tribal ordinances, unless the context shall require a different meaning, it shall be determined to mean the blood of either or both the Kootenai or the Salish Tribes of the Flathead Reservation.

"Section 7. Current Membership Roll - The membership roll of the Confederated Salish and Kootenai Tribes of the Flathead Reservation shall be kept current by striking therefrom the names of persons who have died or have lost membership pursuant to this Constitution and adding thereto the names of persons who shall have established eligibility or been adopted. The roll so prepared shall be the basis for determining the right of persons whose names appear thereon to share in annual per capita distribution of funds or in any other tribal property, subject to Secretarial approval.

"Section 8. Rules of Procedure - The Tribal Council shall have the authority to prescribe rules to be followed in compiling a membership roll in accordance with the provisions of this article, the completed roll to be approved by the Tribal Council of the Confederated Salish and Kootenai Tribes. In case of distribution of tribal assets, the roll shall be submitted to the Secretary of the Interior for final approval as may be provided by law.

"Section 9. Rights of Members are Prospective - No person shall be entitled to receive a per capita payment or share in any other tribal assets which were distributed prior to the date of his actual enrollment."

CERTIFICATION OF ADOPTION

Pursuant to an order approved January 20, 1960, by the Assistant Secretary of the Interior, the attached amendment to the Constitution of the Confederated Salish and Kootenai Tribes of the Flathead Reservation was submitted for ratification to the qualified voters of the Salish and Kootenai Indian Tribes and was on April 1, 1960 duly ratified by a vote of 762 for, and 187 against, in an election in which at least 30 percent of those entitled to vote cast their ballots in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378).

(sgd) Jerome Hewankorn
Vice-Chairman, Tribal Council,
Confederated Salish and Kootenai Tribes

(sgd) E. W. Morigeau
Actg. Secretary, Tribal Council,
Confederated Salish and Kootenai Tribes

(sgd) Charles S. Spencer
Superintendent, Flathead Agency

APPROVAL

I, Fred A. Seaton, Secretary of the Interior of the United States of America, by virtue of the authority granted me by the Act of June 18, 1934 (48 Stat. 984), as amended, do hereby approve the attached Amendment II to the Constitution of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, to be effective as of April 1, 1960, the date of the ratification by the qualified voters of the tribes.

Approval recommended:

(sgd) Glenn L. Emmons
Commissioner, Bureau of Indian Affairs

(sgd) Fred A. Seaton
Secretary of the Interior
(SEAL)

May 6, 1960

Washington, D. C.

CONSTITUTION AND BYLAWS
of the
SALISH AND KOOTENAI TRIBES
of the
FLATHEAD RESERVATION
MONTANA

Amendment III

Article VIII of the Constitution entitled "Land" is hereby amended in its entirety to read as follows:

"Section 1. Land Transactions - Subject to any limitations imposed by this Constitution and Bylaws, to any applicable Federal statute and to the approval of the Secretary of the Interior, the Tribal Council may:

(1) Purchase or receive by gift or relinquishment land or any interest therein, and may lease, exchange (with or without the giving or receipt of other consideration), encumber, and assign tribal lands or any interest therein; and

(2) Adopt ordinances or resolutions governing any or all such transactions.

"Section 2. Saving Clause - Nothing herein shall be held to impair rights heretofore acquired in any allotment or assignment held by any individual."

## CERTIFICATION OF ADOPTION

Pursuant to an order approved January 20, 1960, by the Assistant Secretary of the Interior, the attached amendment to the Constitution of the Confederated Salish and Kootenai Tribes of the Flathead Reservation was submitted for ratification to the qualified voters of the Salish and Kootenai Indian Tribes and was on April 1, 1960, duly ratified by a vote of 617 for, and 329 against, in an election in which at least 30 percent of those entitled to vote cast their ballots in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378).

(sgd.) Jerome Hewankorn
Vice-Chairman, Tribal Council,
Confederated Salish and Kootenai Tribes

(sgd.) E. W. Morigeau
Actg. Secretary, Tribal Council,
Confederated Salish and Kootenai Tribes

(sgd) Charles S. Spencer
Superintendent, Flathead Agency

## APPROVAL

I, Fred A. Seaton, Secretary of the Interior of the United States of America, by virtue of the authority granted me by the Act of June 18, 1934 (48 Stat. 984), as amended, do hereby approve the attached Amendment III to the Constitution of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, to be effective as of April 1, 1960, the date of the ratification by the qualified voters of the tribes.

Approval recommended:

(sgd) Glenn L. Emmons
Commissioner, Bureau of Indian Affairs

(sgd) Fred A. Seaton
Secretary of the Interior
(SEAL)

May 5, 1960 Washington, D. C.

CONSTITUTION AND BYLAWS
of the
SALISH AND KOOTENAI TRIBES
of the
FLATHEAD RESERVATION
MONTANA

Amendment IV

Section 7 of Article I of the Bylaws entitled "The Tribal Council" is hereby amended to read as follows:

"Section 7. Regular meetings of the Tribal Council shall be held on the first Friday of January, April, July, and October, at 9:00 o'clock a.m., at the Flathead Agency."

CERTIFICATION OF ADOPTION

Pursuant to an order approved January 20, 1960, by the Assistant Secretary of the Interior, the attached amendment to the Bylaws of the Confederated Salish and Kootenai Tribes of the Flathead Reservation was submitted for ratification to the qualified voters of the Salish and Kootenai Indian Tribes and was on April 1, 1960, duly ratified by a vote of 825 for, and 117 against, in an election in which at least 30 percent of those entitled to vote cast their ballots in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378).

(sgd) Jerome Hewankorn
Vice-Chairman, Tribal Council,
Confederated Salish and Kootenai Trib

(sgd) E. W. Morigeau
Actg. Secretary, Tribal Council,
Confederated Salish and Kootenai Tribe

(sgd) Charles S. Spencer
Superintendent, Flathead Agency

APPROVAL

I, Fred A. Seaton, Secretary of the Interior of the United States of America, by virtue of the authority granted me by the Act of June 18, 1934 (48 Stat. 984), as amended, do hereby approve the attached Amendment IV to the Bylaws of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, to be effective as of April 1, 1960, the date of the ratification by the qualified voters of the tribes.

Approval recommended:

(sgd) Glenn L. Emmons
Commissioner, Bureau of Indian Affairs

(sgd) Fred A. Seaton
Secretary of the Interior
(SEAL)

May 5, 1960 Washington, D. C.

UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION

DATE: August 5, 1970

*National Archives and Records Service*
*Washington, D.C. 20408*

REPLY TO ATTN OF: NNR

SUBJECT: Request for certain information about the Flathead Indian Reservation.

St. Ignatius, Montana 59865

The enclosed electrostat of a listing of the laws and treaties relating to the Flathead Indian reservation which appears in The House Resolution Authorizing the Committee on Interior to Conduct an Investigation of the Bureau of Indian Affairs (House of Representatives No. 2503, Union Calendar 790, 82d Congress, 2d Session) is for your information.

If you wish to order copies of any of the documents listed in the enclosure, may we suggest that you write to the Photo Duplication Service, Library of Congress, Washington, D. C. 20540.

Richard S. Maxwell

RICHARD S. MAXWELL
Assistant Director
Social and Economic Records Division

Enclosure



## *FLATHEAD OR SALISH INDIANS*

*Flathead or Jocko Reservation, Mont.*

There were 3,630 Flathead or (Salish) and Kutenay Indians on this reservation in 1945 [1] and an estimated 3,894 Indians in 1950. In 1929, Bitter Root, Carlos band, Lower Kalispel and (Upper) Pend d'Oreille Indians were also listed as being on the reservation.[2] The original area was 1,248,000 acres, of which 664,372 acres of allotted lands had been patented in fee, sold or

otherwise alienated in 1934.[3] In 1950, the area consisted of 629,922 acres (232,102 acres, trust allotted; 397,820 acres, tribal; 1,283 acres, reserved by the government).

A treaty of July 16, 1855, with the Flathead Nation, consisting of the Confederated Tribes of Flathead, Kutenay and Upper Pend d'Oreille Indians, ceded certain lands in Montana and Idaho to the United States in return for a reservation in Montana for the confederated tribes and friendly tribes of Washington, who wished to consolidate with them under the designation of "Flathead Nation", certain payments, etc., over a period of years and exclusive fishing rights in the reservation. The President was authorized to have lands allotted in severalty, allotments to consist of from one-eighth to one section, or more, and to issue patents therefor conditioned on non-alienation, leases limited to two years and tax exemption, etc. (12 Stat. 975–979).

A treaty of October 17, 1855, with the Flathead Nation and the Nez Perce Indians, west of the Rocky Mountains, and the Blackfoot Nation, east of the Rocky Mountains permitted the Flathead Nation to hunt east of the Rockies (11 Stat. 657–662).

An act of June 5, 1872, amended June 22, 1874, provided for removal of the Flatheads from Bitter Root Valley in Montana to the Jocko Reservation, Mont., set apart under the treaty of July 16, 1855, above. Lands in Bitter Root Valley were to be opened for settlement and proceeds from sale paid into the Treasury and an annual appropriation of $5,000 made for ten years, to be expended by the President for the benefit of the Indians who settled on the Jocko reservation (17 Stat. 226–227, c. 308; 18 Stat. 173, c. 389).

An act of July 4, 1884, ratified an agreement of September 2, 1882, with the Flatheads authorizing a right of way through the reservation and appropriated $16,000 to pay the Flatheads (23 Stat. 89, c. 180).

An act of March 2, 1889, amended July 1, 1898, provided for sale of lands allotted to Flatheads in Bitter Root Valley, Mont., with consent of the individual Indians, and deposit of proceeds in the Treasury to the credit of the individual Indians. The Secretary was authorized to pay cash to them or expend the money for their benefit. The Indians were to be moved to the Jocko Reservation in Montana (25 Stat. 871–872, c. 391; 30 Stat. 596, c. 545, § 9).

An act of April 23, 1904, amended March 3, 1905, June 21, 1906, May 29, 1908, March 3, 1909, April 12, 1910, and February 28, 1919, provided for allotments to be made to the Confederated Tribes of Flathead, Kootenai, and Upper Pend d'Oreille Indians and other Indians on the reservation, including Lower Pend d'Oreille or Kalispel Indians. Residue of lands was to be opened to settlement, except for certain lands reserved for missions, government agencies, etc., a biological station for the University of Montana and 5,000 acres of timber lands for use of said Indians. Proceeds from sale of lands were to be deposited in the Treasury and after deducting funds for irrigation, one-half of the remaining funds were to be expended by the Secretary for the benefit of the Indians and the other half was to be paid to the Indians on the reservation, semiannually, as the same became available, share

and share alike, except that the Secretary was authorized to withhold pro rata shares for irrigation charges. The amending act of 1906 authorized the Secretary to reserve town sites and 160 acres at hot springs near Camas, moneys derived from the springs to be for the benefit of the Indians. The amending act of 1909 permitted the Secretary to reserve lands for power or reservoir sites (45,714 acres were reserved). Under the amendment of 1910, sale of not more than 60 acres of allotted lands, upon application of the allottee, was authorized, half of proceeds to be paid to the allottee and half to be held in trust at three percent interest, which interest was to be paid to the allottee annually and the remaining principal paid to the allottee or heirs when the trust patent expired, or sooner in the discretion of the Secretary. Lieu lands were to be given for allotments on power or reservoir sites, to be enforced by condemnation proceedings if necessary. The amendment of 1919 provided for designation of land as valuable for stock-watering and required existing trails to be kept open to same (33 Stat. 302–306, c. 1495; 1080–1081, c. 1479, § 9; 34 Stat. 354–355, c. 3504; 35 Stat. 449–450, c. 216, 795–796, c. 263; 36 Stat. 296–297, c. 156; 40 Stat. 1203, c. 71).

An act of May 23, 1908, amended March 4, 1909, authorized reservation of 20,000 acres of the reservation for the National Bison Range and $30,000 was appropriated to pay the Indians on the reservation for their lands (35 Stat. 267, c. 192, 927, c. 298, 1051, c. 301).

An act of April 4, 1910, provided for reimbursement of appropriations for irrigation systems for allotted and unallotted irrigable lands (36 Stat. 277, c. 140).

An executive order of February 15, 1912, reserved certain lands in the reservation for a town site and an executive order of April 13, 1912, reserved other lands.

An act of July 10, 1912, authorized sale of lands to the city of Ronan, proceeds to be credited to the Flathead Indians, to draw interest at the rate provided by law and to be used for the benefit of said Indians (37 Stat. 192, c. 229).

Executive Order 1682 of January 14, 1913, reserved certain lands on the reservation for administrative purposes.

An act of May 18, 1916, authorized the opening of lands on the reservation, formerly classified as timber lands, to homestead entry; payment was to be made for timber in addition to the price of the land (39 Stat. 139, c. 125).

An act of May 18, 1916, regulated the payment of irrigation charges on lands allotted in severalty and allotted lands that had been sold; tribal funds which had been covered into the Treasury for irrigation construction charges were to be placed to the credit of the tribe and to be available for expenditure for the benefit of the tribe (39 Stat. 141, c. 125, § 11).

An act of June 27, 1918, authorized the Secretary to convey 120 acres of land in the reservation to a certain individual, said land to remain under government control (40 Stat. 616–617, c. 106).

An act of January 7, 1919, authorized sale of land to a school district, proceeds to be deposited to the credit of the Flathead

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Indians, to draw interest as provided by law and to be used for the benefit of the Indians on the reservation, provided Indian children were admitted to attend school on equality with white children (40 Stat. 1053, c. 5).

An act of February 14, 1920, authorized exchange of 200 acres of land with the State, in lieu of a portion of the reservation reserved for school lands (41 Stat. 421, c. 75, § 10).

An act of February 25, 1920, amended June 16, 1950, authorized allotments to all unallotted living children enrolled or entitled to enrollment with the tribe; 40 acres of each allotment was to be designated as a homestead and was to be inalienable and nontaxable during minority; the first cutting of timber on timber land allotments was to be reserved for tribal benefit and title to residual timber was to pass to the allottees, etc. (41 Stat. 452, c. 87; Public Law 557, 81st Cong.).

An act of May 31, 1924, authorized addition of certain descendants of the Confederated tribes, to the final roll and per capita payments to such Indians (43 Stat. 246, c. 215).

An act of March 13, 1924, amended February 3, 1931, conferred jurisdiction on the Court of Claims to determine claims of Flathead, Kootenai, and Upper Pend d'Oreille Tribes on the reservation under treaty of July 16, 1855, above, and provided that the amount of any judgment was to be deposited in the Treasury to the credit of the Indians and was to draw interest at four percent (43 Stat. 21, c. 54; 46 Stat. 1060, c. 101).

An act of May 10, 1926, required contracts for repayment of irrigation construction charges and also required disposal of holdings in excess of 160 acres of land on the reservation, but trust patent Indian lands were not to be subject to these provisions until issuance of a fee patent (44 Stat. 465, c. 277).

An act of March 7, 1928, authorized the Federal Power Commission to issue licenses for water power developments on the reservation; rentals were to be paid to the Indians as a tribe and deposited in the Treasury at four percent interest (45 Stat. 212, c. 87).

An act of March 7, 1928, directed the Federal Power Commission to waive fees for issuance of water power permits or licenses on the reservation (45 Stat. 1640, c. 707).

An act of April 4, 1938, authorized lease of lands for agricultural and grazing, etc., purposes, on irrigation projects, reserves, etc., funds derived therefrom to be deposited to the credits of the tribe; consent of the tribe to lease of tribal lands was required if the tribe was organized (52 Stat. 193, c. 63).

An act of June 24, 1946, provided that tribal funds of the Confederated Salish and Kootenai Tribes on the reservation were to be available for purposes designated by the tribal council and approved by the Secretary (60 Stat. 302, c. 460).

An act of July 30, 1946, conferred jurisdiction on the Court of Claims to adjudicate claims of the Confederated Salish and Kootenai Tribes on this reservation. The amount of any judgment was to be placed in the Treasury to the credit of the Indians, at four percent interest, and was to be subject to appropriation by Congress for the benefit of the Indians (60 Stat. 715–716, c. 761).

An act of May 20, 1948, authorized conveyance of certain lands on the reservation to the State of Montana (62 Stat. 248, c. 325).

An act of May 25, 1948, authorized reimbursable appropriations of $64,570.56 to repay the Confederated Salish and Kootenai Tribes of the Reservation amounts due them under the act of May 18, 1916, above, and $100,000 in settlement of claims for use of tribal lands for irrigation and power systems or wildlife refuges; the tribes were to have the right to use such tribal lands and grant leases or concessions thereon, for purposes not inconsistent with such permanent easements (62 Stat. 272, c. 340, § 5).

An act of August 18, 1949, authorized a patent in fee to about five acres of land to be issued to Lake County, Mont., with the consent of the tribal council (63 Stat. 614, c. 472; Public Law 245, 81st Congress).

An act of August 19, 1949, authorized an appropriation for repair, etc., of the drainage system for lands within the city of Polson, Mont., on the reservation; the city was to operate same in perpetuity (63 Stat. 621, c. 487; Public Law 255, 81st Congress).

# Upper Columbia UPDATE

THE NEWSLETTER OF THE UPPER COLUMBIA ALTERNATIVE FLOOD CONTROL AND FISH OPERATIONS ENVIRONMENTAL IMPACT STATEMENT (EIS)

ISSUE #6 – WINTER 2005


# In this issue . . .

We have published five newsletters to inform you of the progress on the Upper Columbia Alternative Flood Control and Fish Operations Environmental Impact Statement (also known as the VARQ EIS). This 6th edition is intended specifically to summarize results of the hydrologic analysis at Hungry Horse and Libby Dams and hydropower analysis of the Columbia River coordinated hydropower system.

The 7th newsletter will be timed to come out during the public review period for the draft EIS later in 2005, and will focus on the overall document and the comment process. The 8th and final newsletter will be geared toward the wrap-up of the EIS and our decision on future project operations.

The EIS will evaluate four alternatives that combine different operations at Libby and Hungry Horse dams:

*At Hungry Horse Dam:*
- Standard Flood Control (FC) with fish flows*
- VARQ FC with fish flows

*At Libby Dam***:*
- Standard FC with fish flows including sturgeon flows up to current powerhouse capacity
- VARQ FC with fish flows including sturgeon flows up to current powerhouse capacity
- Standard FC with fish flows including sturgeon flows up to 10,000 cubic feet per second (cfs) above current powerhouse capacity
- VARQ FC with fish flows including sturgeon flows up to 10,000 cfs above current powerhouse capacity

**Fish flows include bull trout minimum flows and salmon augmentation at Hungry Horse Dam and bull trout minimum flows, salmon augmentation and sturgeon flows at Libby Dam.*

***The impacts of the Libby fish flows will be evaluated by comparing EIS alternatives to operational scenarios without fish flows.*

## INSIDE


Simulation of Local Effects of Alternative Flood Control and Fish Operations at Libby Dam, Montana p.2

Simulation of Multipurpose Operation of the Columbia River Hydropower System p.3


## Simulation of Local Effects of Alternative Flood Control Operations at Hungry Horse Dam, Montana

Reclamation has completed a hydrologic analysis, using computer modeling, for alternative operations at Hungry Horse Dam. The analysis shows that impacts to reservoir elevations and discharges at Hungry Horse Dam and at projects downstream to below Albeni Falls Dam are minimal when comparing VARQ FC to Standard FC.

VARQ FC is intended to reduce the seasonal flood control draft without compromising system-wide flood control protection. If the amount of water that is normally stored during the refill period is passed through the project, then the amount of storage space needed in the project is reduced. Typically the May 1 water surface elevation at Hungry Horse will be higher with VARQ FC than Standard FC in years when forecasted project inflows are less than 130% of average. In years where forecasted inflows are greater than 130% of average,

*continued on page 2 ▸*

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Hungry Horse Reservoir would be at similar elevations for both Standard FC and VARQ FC.

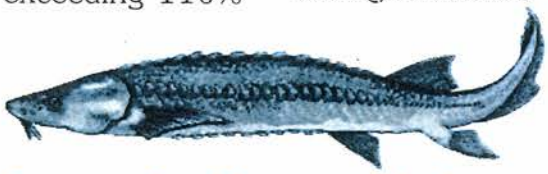
Refill probabilities are slightly higher at Hungry Horse Reservoir and at Flathead Lake under VARQ FC compared to Standard FC. Flathead Lake elevation remains up to six inches higher for several weeks in the summer during below-average water years under VARQ FC.

The discharges from Hungry Horse Dam under the VARQ FC rule curves are generally higher in May and June and lower in April when compared to Standard FC. This same pattern is also true at Flathead Lake and Albeni Falls Dams where flows are slightly higher in June and slightly lower in April under VARQ FC.

Limitations in capacity to transmit electricity, which are summarized in more detail in the full report, could result in increased spill at Hungry Horse due to VARQ FC. Increased spill causes subsequent increases in total dissolved gas saturation. Consequently occurrences of total dissolved gases exceeding 110% saturation (Montana State maximum standard under the Clean Water Act) could be increased below Hungry Horse Dam under VARQ FC.

There is no difference between Standard FC and VARQ FC in the probability of exceeding flood stage at Columbia Falls. There is no increase in the occurrence of flooding on the Flathead River at Columbia Falls, Montana under VARQ FC. Below flood stage, Flathead River flows are slightly higher for VARQ FC. VARQ FC resulted in slightly lower flows in the Pend Oreille River below Albeni Falls Dam during the March-April time period when flooding at Cusick, Washington due to local inflows is a concern. Flows in the Pend Oreille River below Albeni Falls Dam are slightly higher in June under VARQ FC, but the frequency of exceeding the flood warning threshold of 100,000 cfs is essentially the same for VARQ FC and Standard FC.

Additional details may be found in the Hungry Horse report available at: http://www.usbr.gov/pn/programs/VARQ/links.html



# Simulation of Local Effects of Alternative Flood Control and Fish Operations at Libby Dam, Montana

The Corps conducted a hydrologic analysis using computer modeling for alternative operations at Libby Dam. The analysis simulates how those operations affect flows, river levels, and reservoir/lake elevations at Libby Dam, Bonners Ferry, and Kootenay Lake.

Results show that VARQ FC improves reservoir refill compared to the corresponding Standard FC operation, but fish flow operations decrease the annual maximum reservoir elevation and refill percentage. In near-average-runoff years, peak Libby Dam outflows during refill in the spring and summer are generally greater with VARQ FC than they are with Standard FC. As peak outflows approach the powerhouse capacity (about 25,000 cfs), outflows under VARQ FC and Standard FC outflows are similar. This is because draft requirements are the same for VARQ FC as for Standard FC in high runoff years. In all simulations, the maximum outflow from Libby Dam remained below 40,000 cfs. In general, the peak outflow from Libby Dam increases as a result of sturgeon flows and as the peak sturgeon flow increases.

In most years at Bonners Ferry, VARQ FC results in higher river stages than the

continued on next page▸

## DEFINITIONS IN THIS ISSUE

**Variable flow (Q), or VARQ flood control:** An alternative flood control operation whereby a storage reservoir is lowered less in winter during years with a low or medium runoff forecast.

**Standard Flood Control (also referred to as BASE-CRT63):** The flood control protocol proposed for long-term replacement by VARQ flood control for Libby & Hungry Horse dams.

**Flood Control Draft:** Releasing water from the dam to lower the reservoir elevation, typically when reservoir inflows are low. The lowered reservoir then has storage space to capture water when necessary to help control downstream flows during high runoff events caused by rainfall and/or snowmelt.


## PUBLISHING INFORMATION

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Standard FC procedure. However, Bonners Ferry river stage in the high runoff years is similar under both VARQ FC and Standard FC since simulated and actual water management for flood control limits Bonners Ferry stage to 1764 feet, when possible. With VARQ FC, the modeled likelihood of peak Bonners Ferry elevations between 1764 and 1765 feet is about 1% higher than with Standard FC. But the likelihood of exceeding a peak Bonners Ferry stage of 1765 feet is equal for both operations. When compared to without-fish-flow scenarios, fish flows cause an increase in peak stage and duration at river levels below flood stage at Bonners Ferry, with sturgeon flows at 10,000 cfs above current powerhouse capacity showing the greatest increases.

Kootenay Lake tends to be higher under VARQ FC than Standard FC. Sturgeon flows tend to increase the peak level of Kootenay Lake between one and three feet, depending on the flood control method (standard or VARQ) and type of sturgeon flows provided (limited to powerhouse capacity or to 10,000 cfs above current powerhouse capacity).

To complete this modeling, many assumptions regarding real-time operations were made, including water supply forecasts, sturgeon operations and operational decisions. The study included an analysis of how sensitive the results were to these decision criteria used in the computer models. The sensitivity analysis indicates that the modeling has captured the upper bounds of impacts to river flows and stages.

Additional details may be found in the Libby report available at: http://www.usbr.gov/pn/programs/VARQ/links.html

# Simulation of Multipurpose Operation of the Columbia River Hydropower System

Using computer modeling, the Corps conducted a study that simulates the operation of Federal, private, and public utility dams that make up the Columbia River basin's coordinated hydropower system. The study evaluated impacts of flood control and fish operations at Libby and Hungry Horse dams on hydropower generation, Grand Coulee Dam operations, and mainstem Columbia River flow targets for salmon.

Comparing the impacts of the two flood control operations, VARQ Flood Control (FC) and Standard FC (both including fish flows at Libby Dam), the model showed the following:

*Power impacts:* Results indicate that although the average individual monthly generation could be reduced by as much as 4% with VARQ FC, the average annual system generation would decrease by less than 0.1%, or about 7 average megawatts. VARQ operations tended to increase system power generation from May through August and decrease system power generation from January through April.

*Impacts to Grand Coulee reservoir elevation:* Grand Coulee Dam, in coordination with Libby, Hungry Horse, and other dams in the U.S. and Canada, is operated to provide flood protection at The Dalles and Portland, Oregon. Available space at upstream dams can affect flood control space requirements at Grand Coulee. On May 1, Grand Coulee is drafted from 0 to 6 feet deeper due to implementation of VARQ FC at Libby and Hungry Horse. There would be no difference in draft at Grand Coulee in 24 out of 52 years.

*Impacts to salmon flow targets:* Spring and summer flow targets at McNary Dam were achieved more frequently with VARQ FC, but the likelihood of meeting flow targets at Priest Rapids Dam was not substantially affected.

continued on back page

## NOW ON THE WEB

For the latest news and information on the UC project, go to

**www.usbr.gov/pn/programs/VARQ**

*Listed below* are just a few of the informative articles and documents you'll find on the website:

- **Monthly Forecast Updates**
  Monthly updates of water supply forecasts, flood control target elevations based on those forecasts, and current reservoir elevations for Libby, Hungry Horse, and Grand Coulee.
- **Technical Study Reports**
  Postings of reports on the various technical studies being done to support the EIS evaluation.
- **Frequently Asked Questions**
  Answers to a number of questions about the project covering technical issues, policy, background, and process.

### Plus links to:

- Agency websites
- Articles and reports on Columbia and Kootenai River dam and flood control operations
- Information on endangered species
- Alternative perspectives and viewpoints

### Any Missing Links?

If there are any links you think would add to the information on our site, please submit them to: **uceis@usace.army.mil**

***Thanks for your input!***

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In addition to comparisons between the two flood control alternatives (which both included implementation of fish flows at Libby), this study also looked at changes specifically due to the fish flows themselves at Libby Dam. The basic results were:

*Power impacts:* The average annual generation of the Columbia River power system was decreased by less than 1% due to the implementation of fish flows at Libby Dam. Under Standard FC, Libby fish flows resulted in monthly generation increases in the spring of 1% to 3%, and decreases in September of about 13%. Under VARQ FC, Libby fish flows resulted in monthly generation increases of 1% to 5% from May to August, and decreases of about 13% in September.

*Impacts to Grand Coulee reservoir elevation:* Implementation of fish flows at Libby Dam did not affect Grand Coulee water surface elevations on May 1.

*Impacts to salmon flow targets:* Flow targets at McNary Dam were more likely to be met in May through August with Libby fish flows added to either VARQ FC or Standard FC. Priest Rapids flow targets were more likely to be met in May and June for Standard FC with Libby fish flows, but were equally likely under VARQ FC regardless of fish flow implementation.

Hydropower generation data from this study will be used to assess anticipated economic impacts. The economic impacts report is scheduled for completion in the next few months. Additional details may be found in the final hydropower impacts report located at: http://www.usbr.gov/pn/programs/VARQ/links.html

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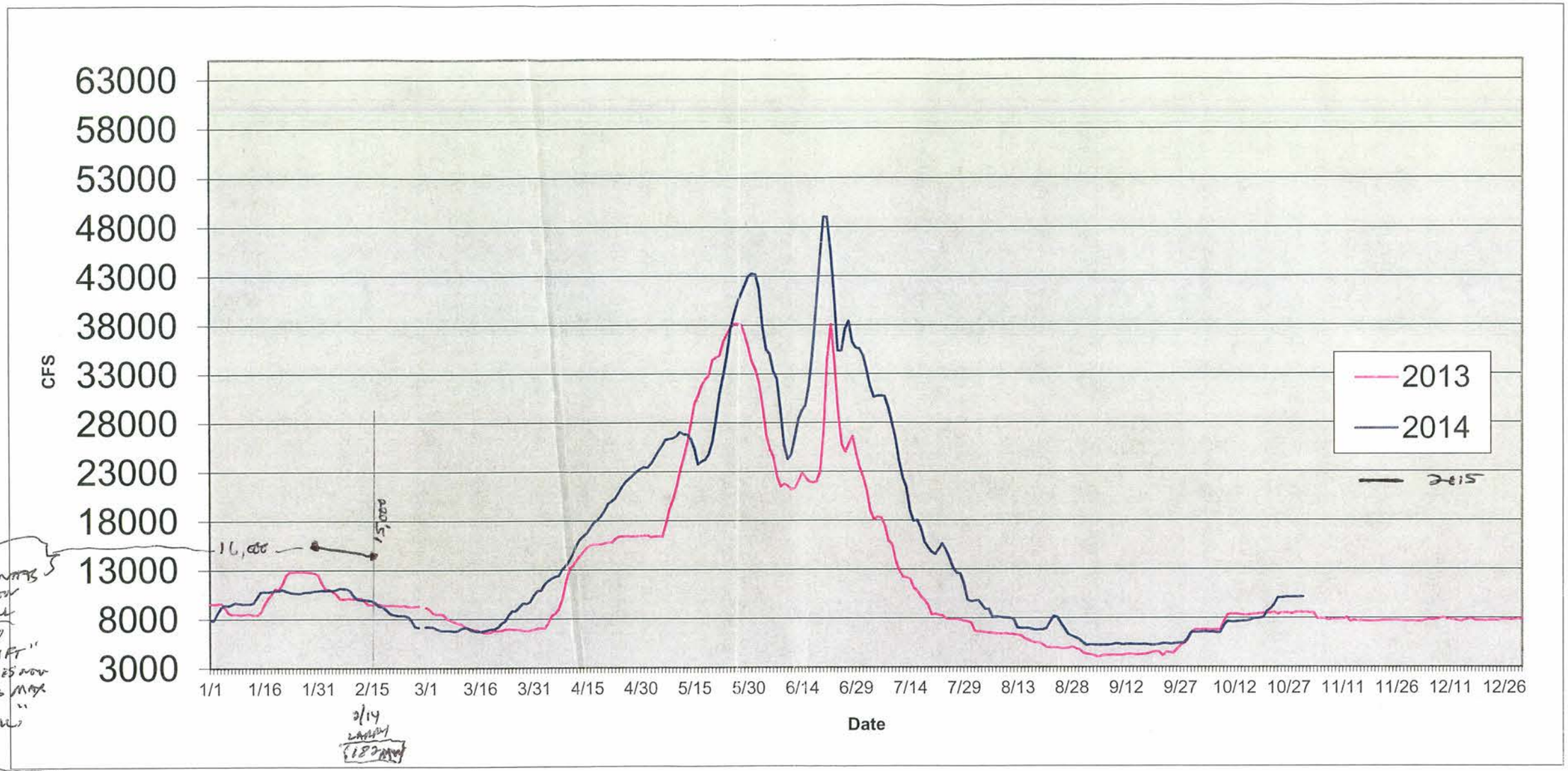


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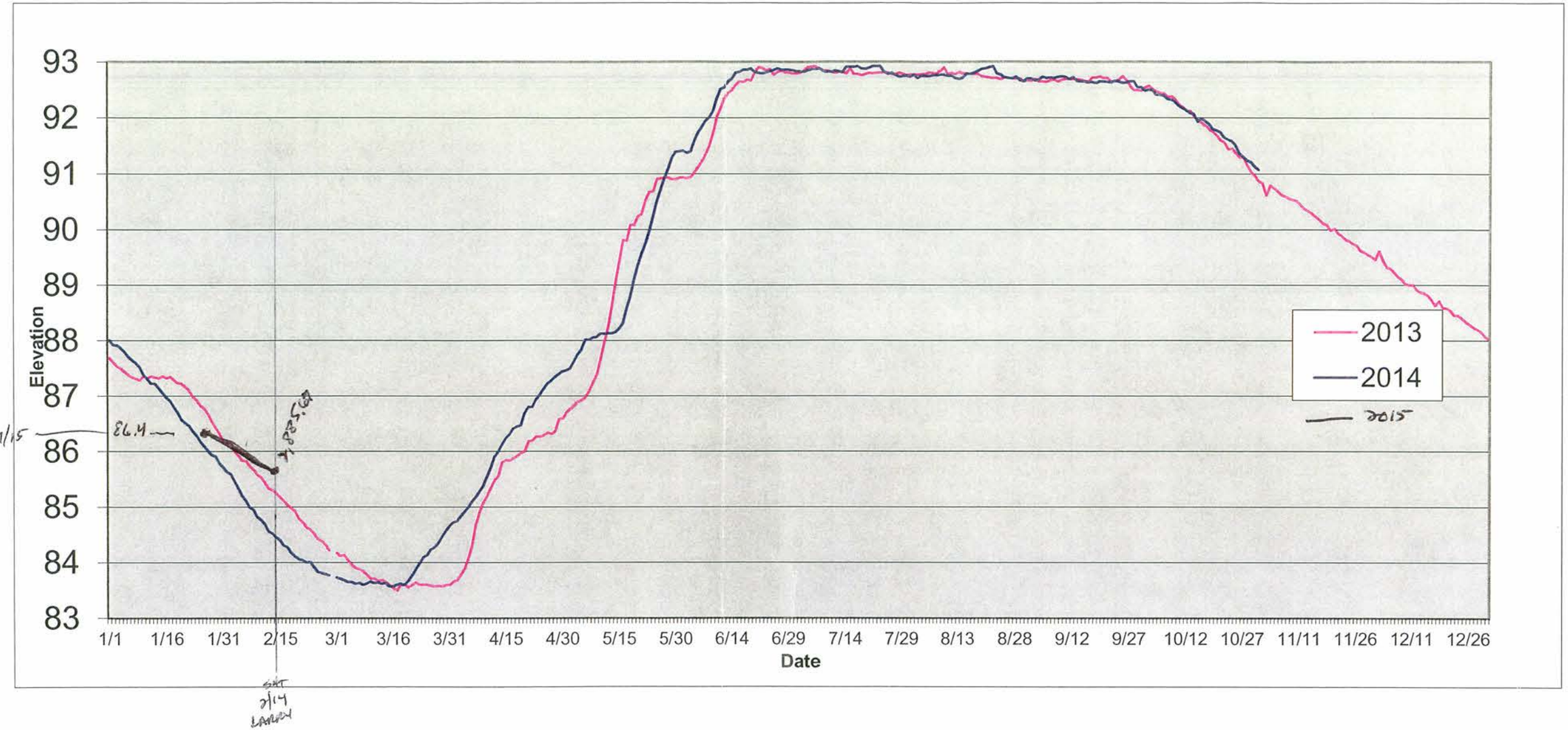
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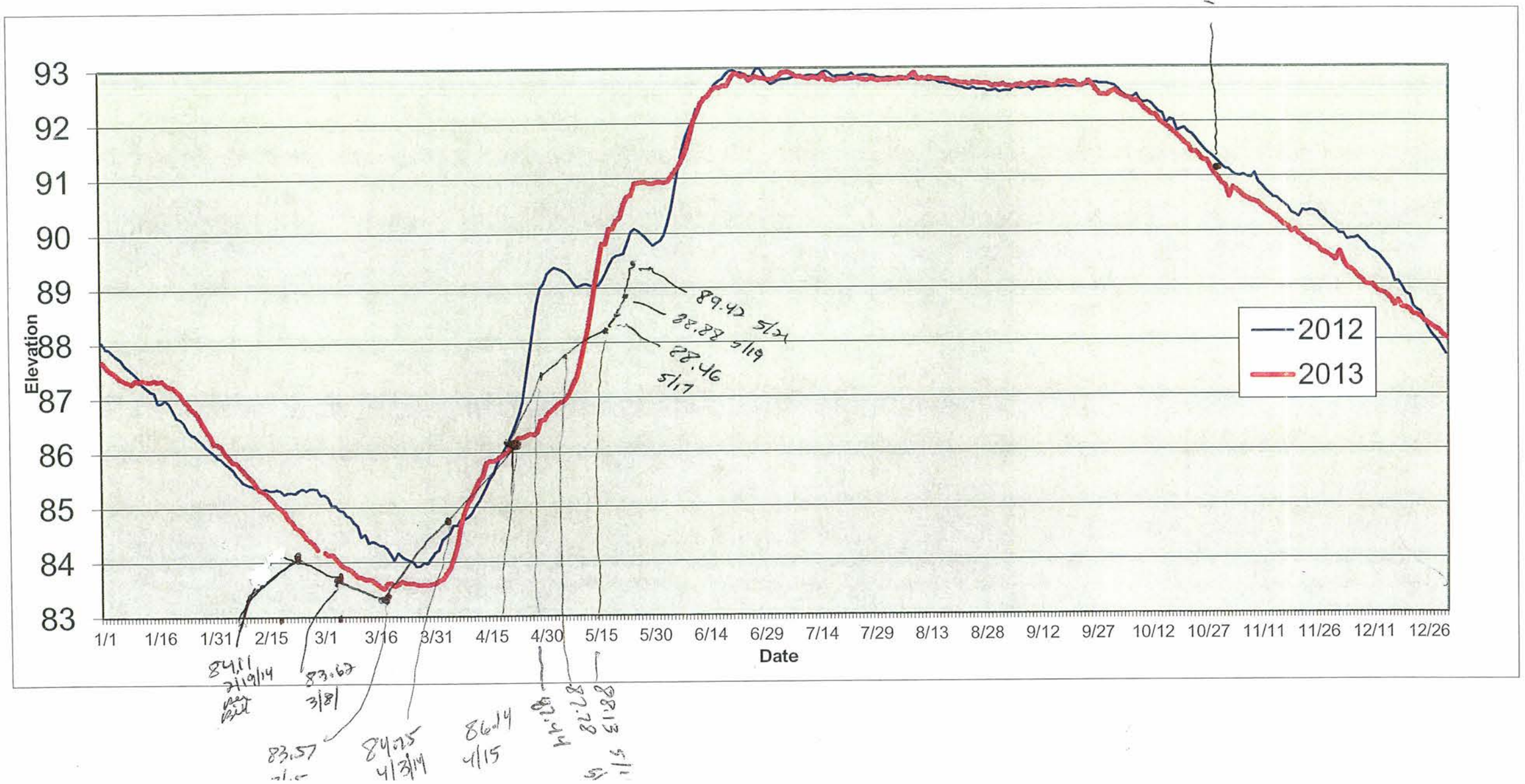
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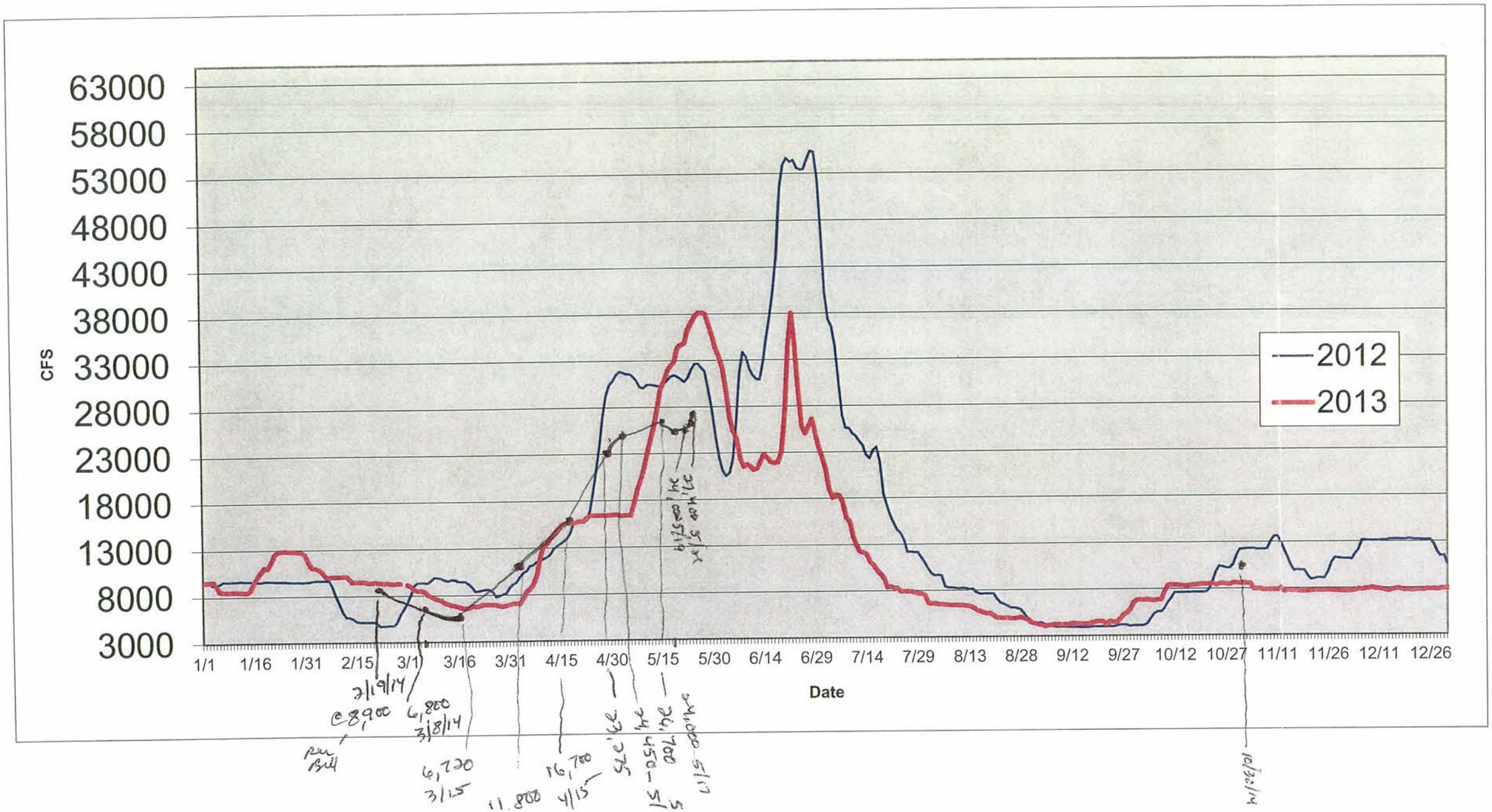

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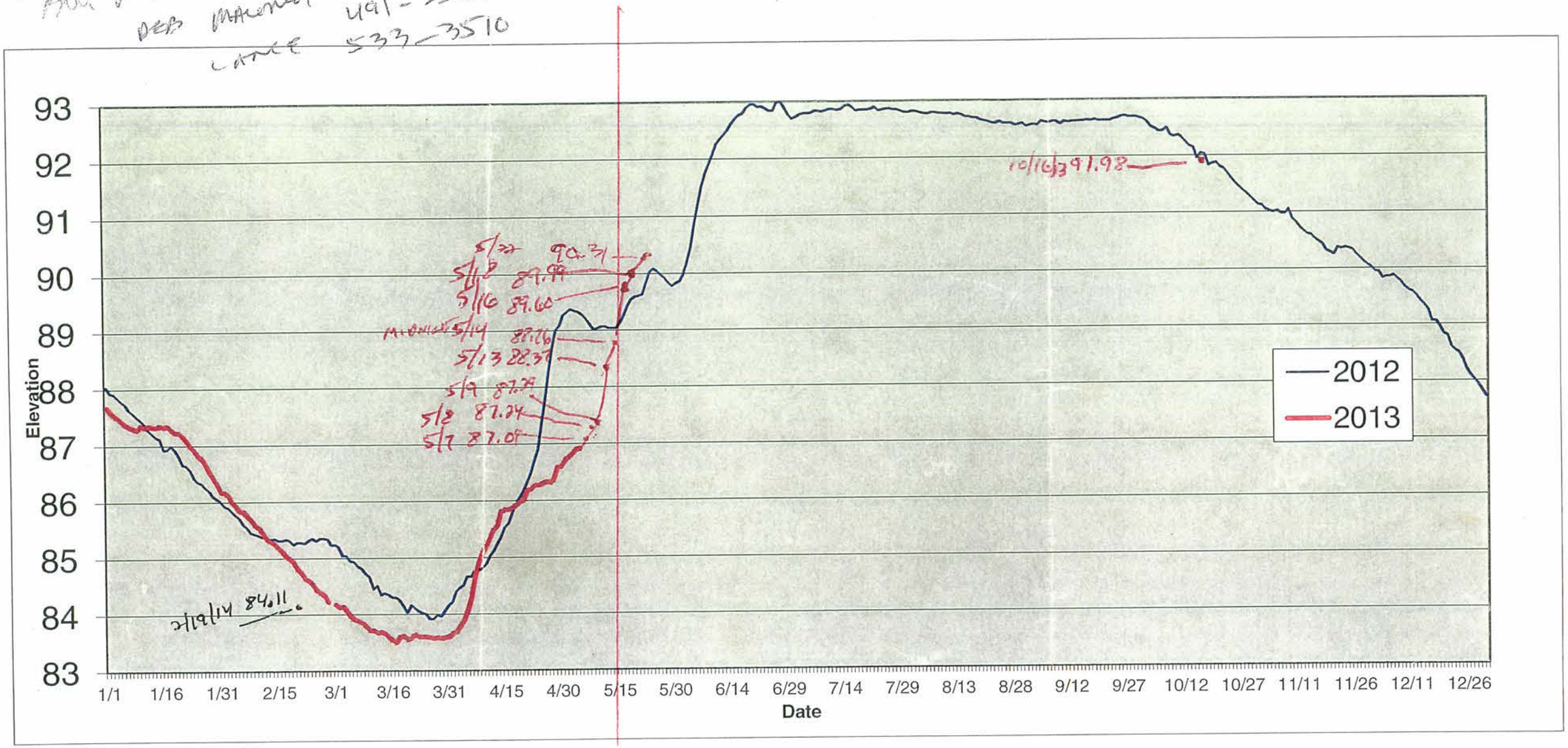

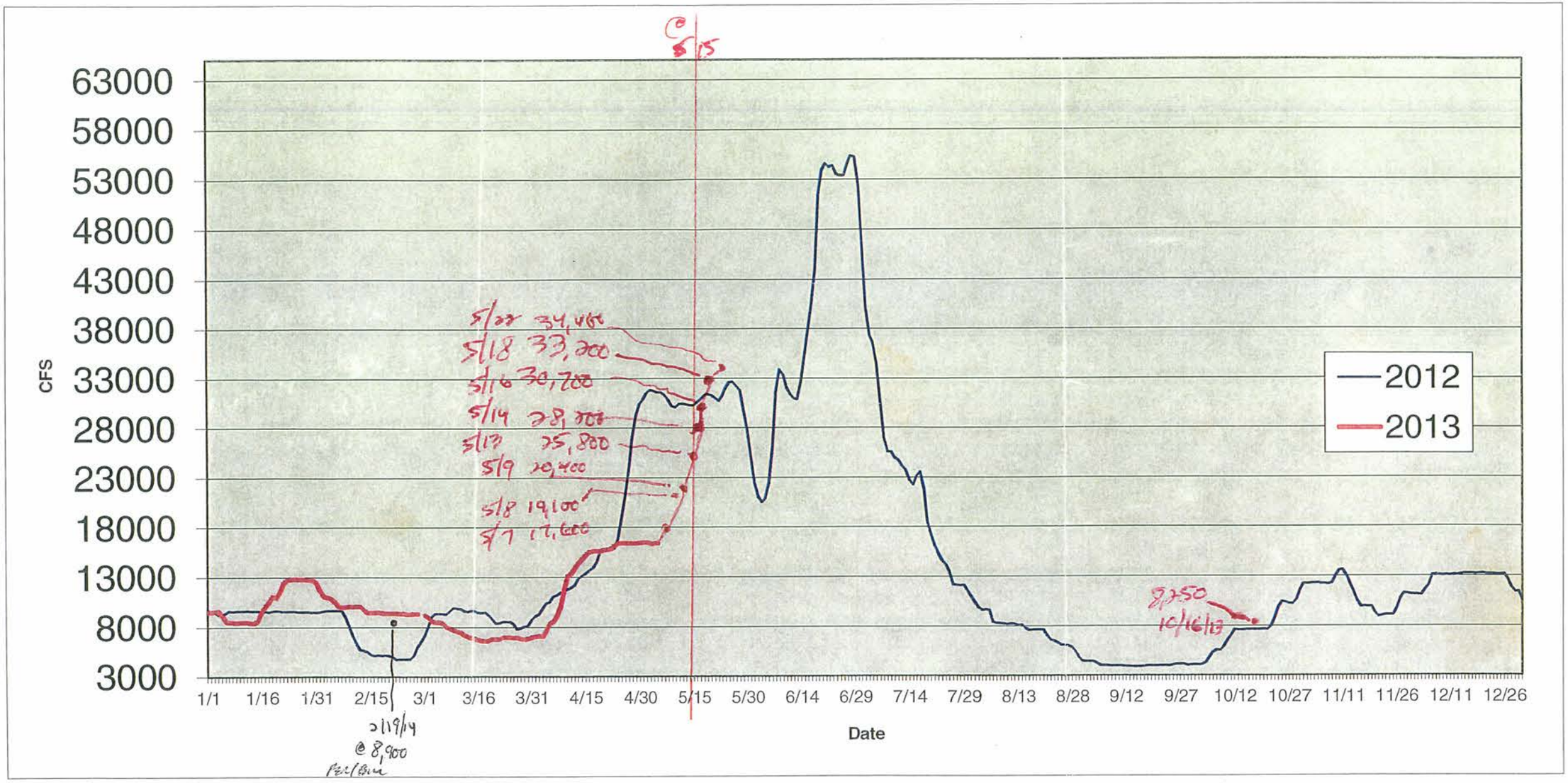
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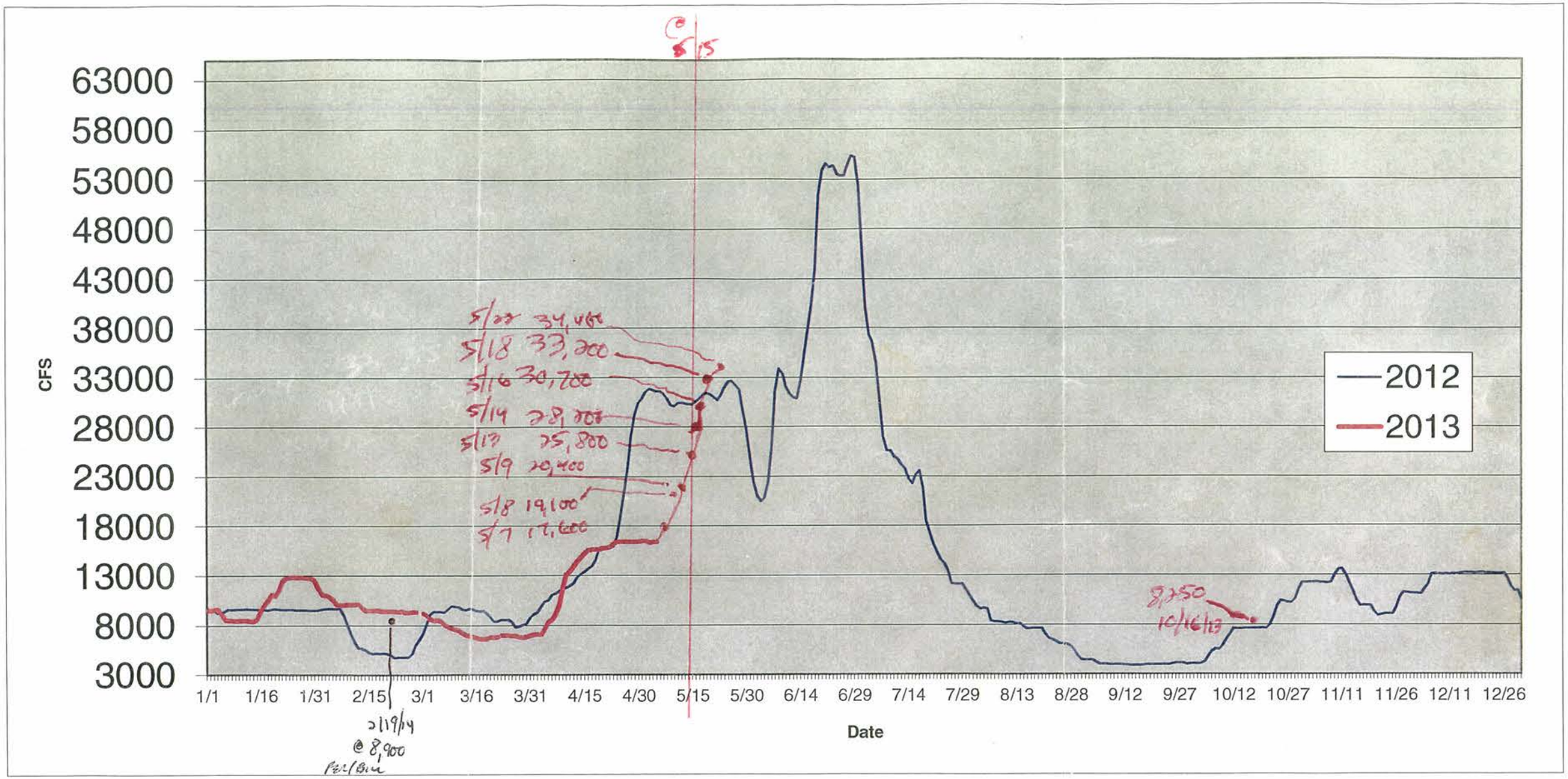
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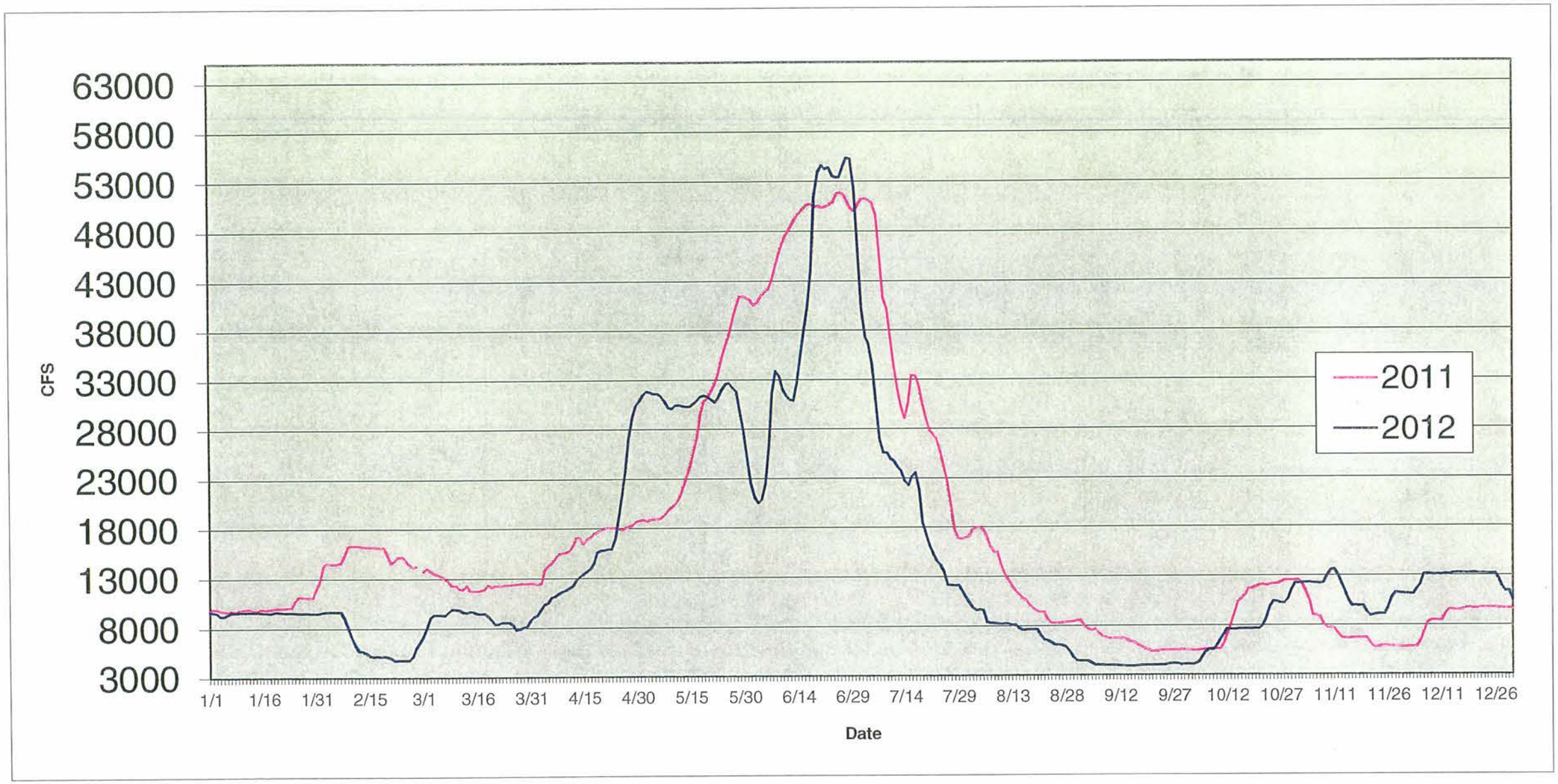
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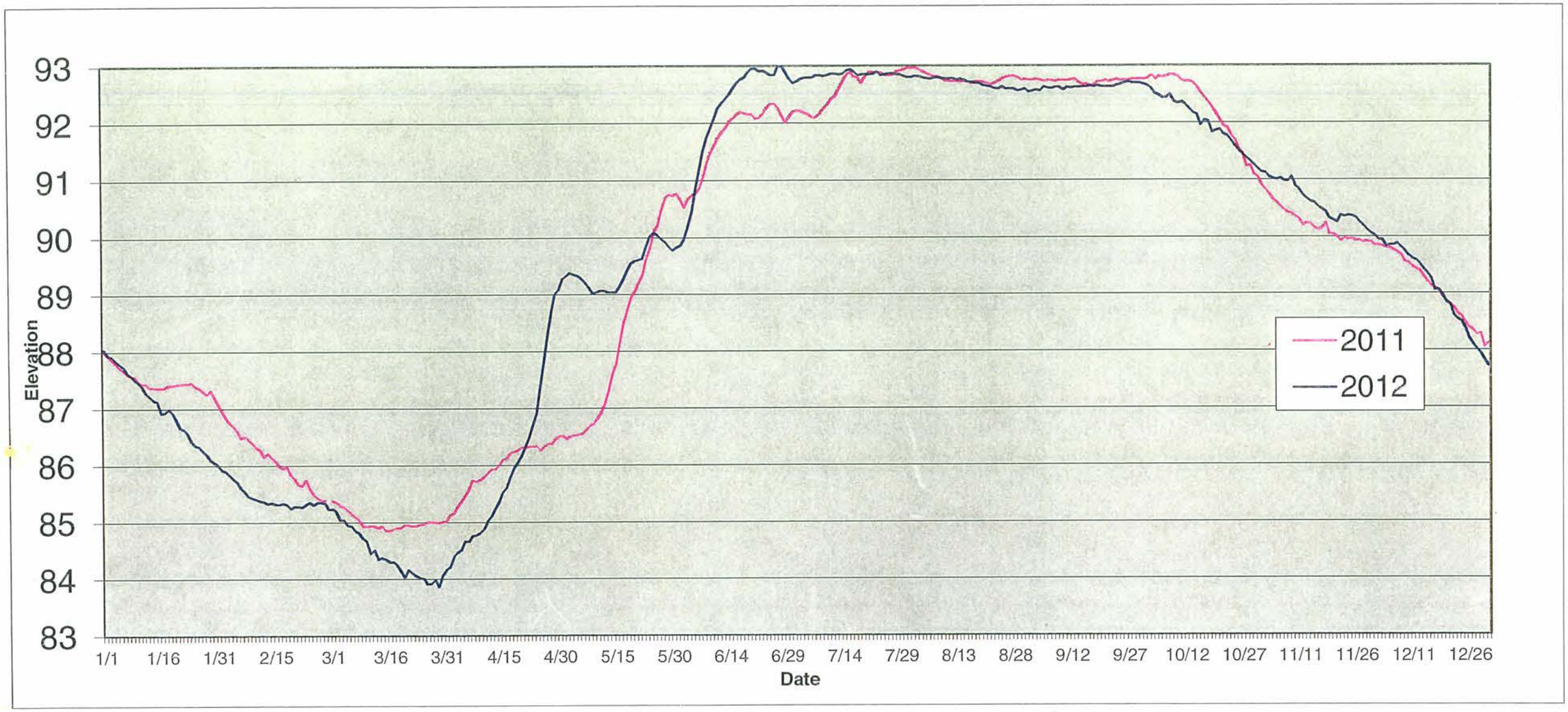
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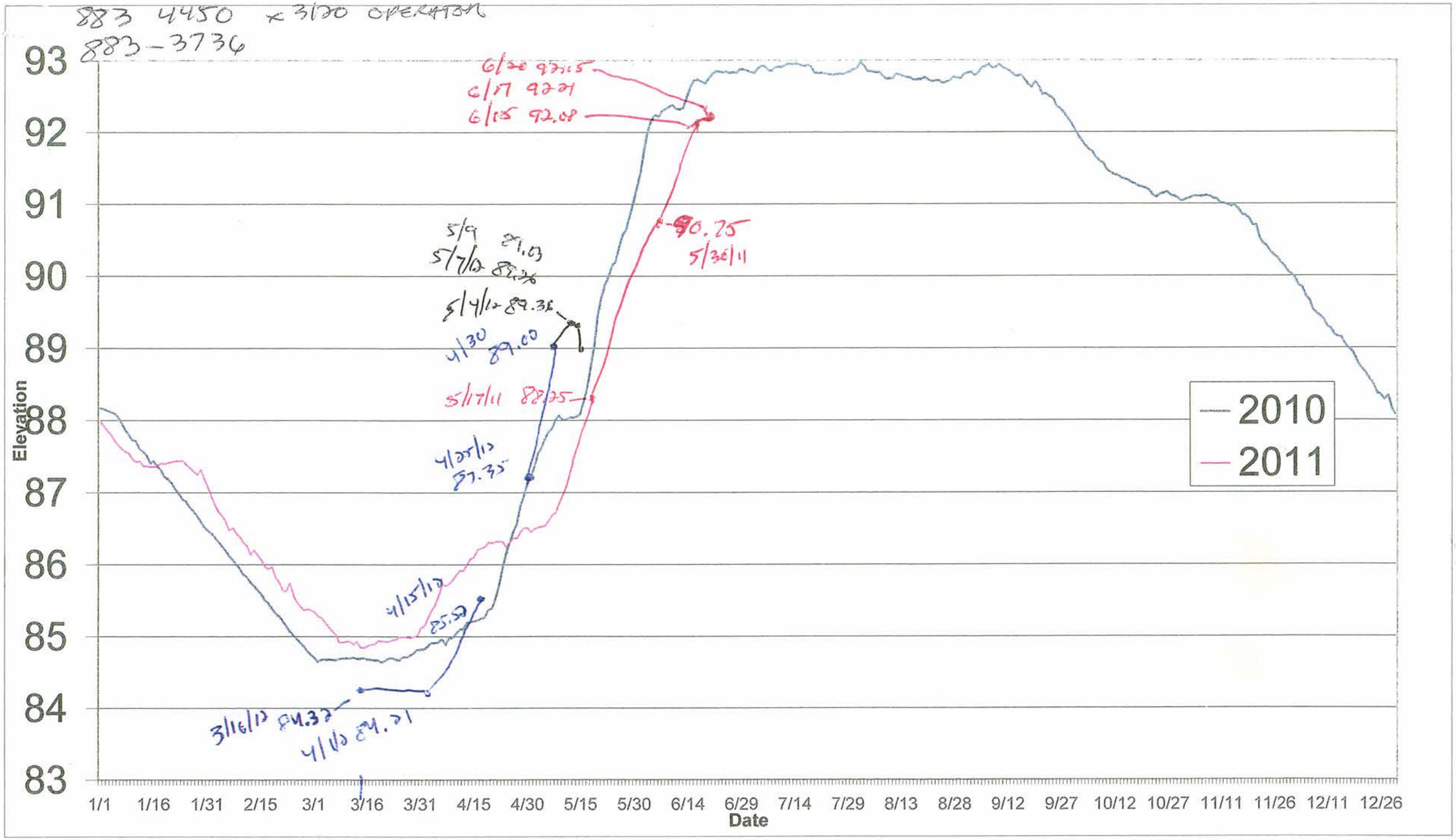

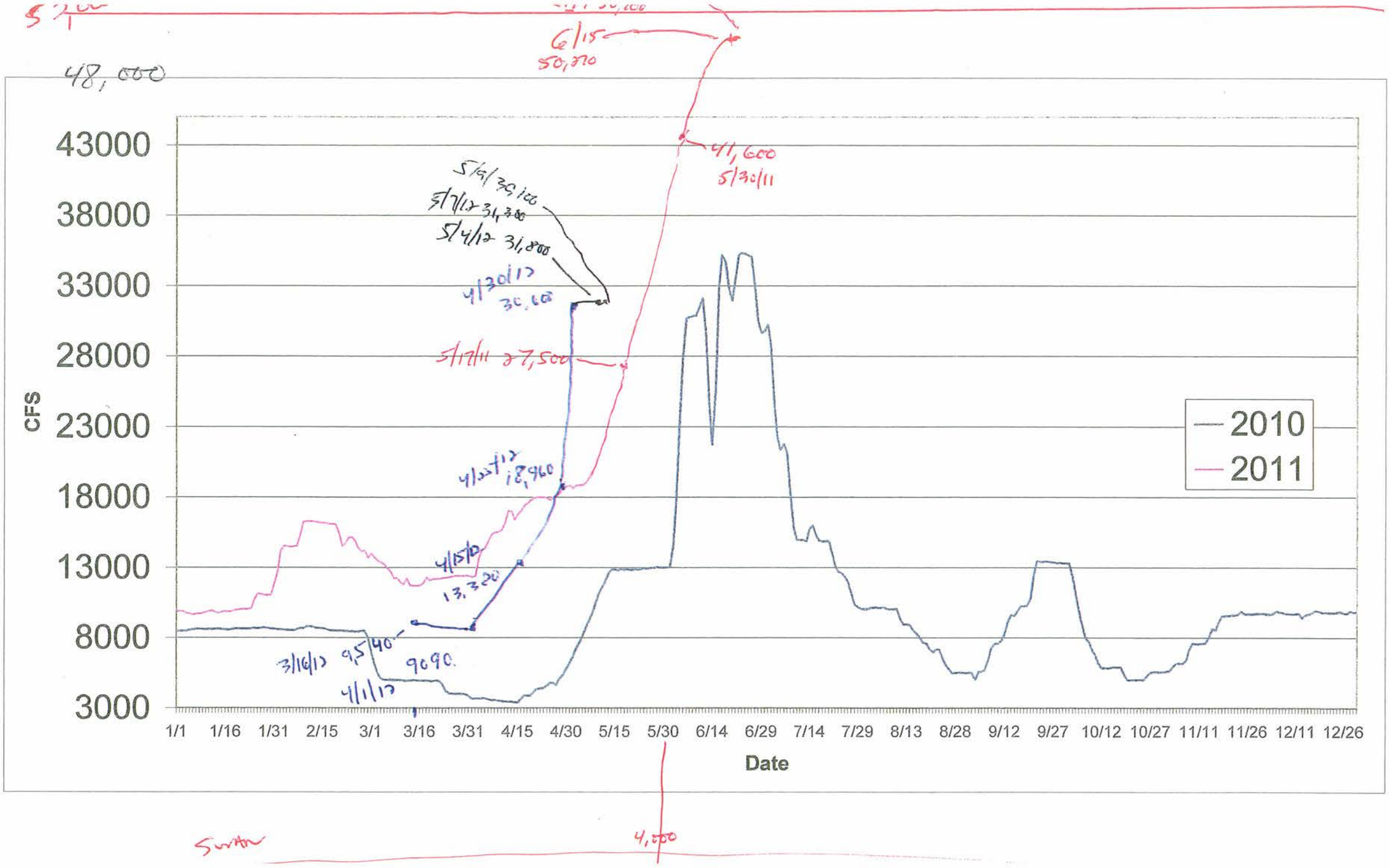
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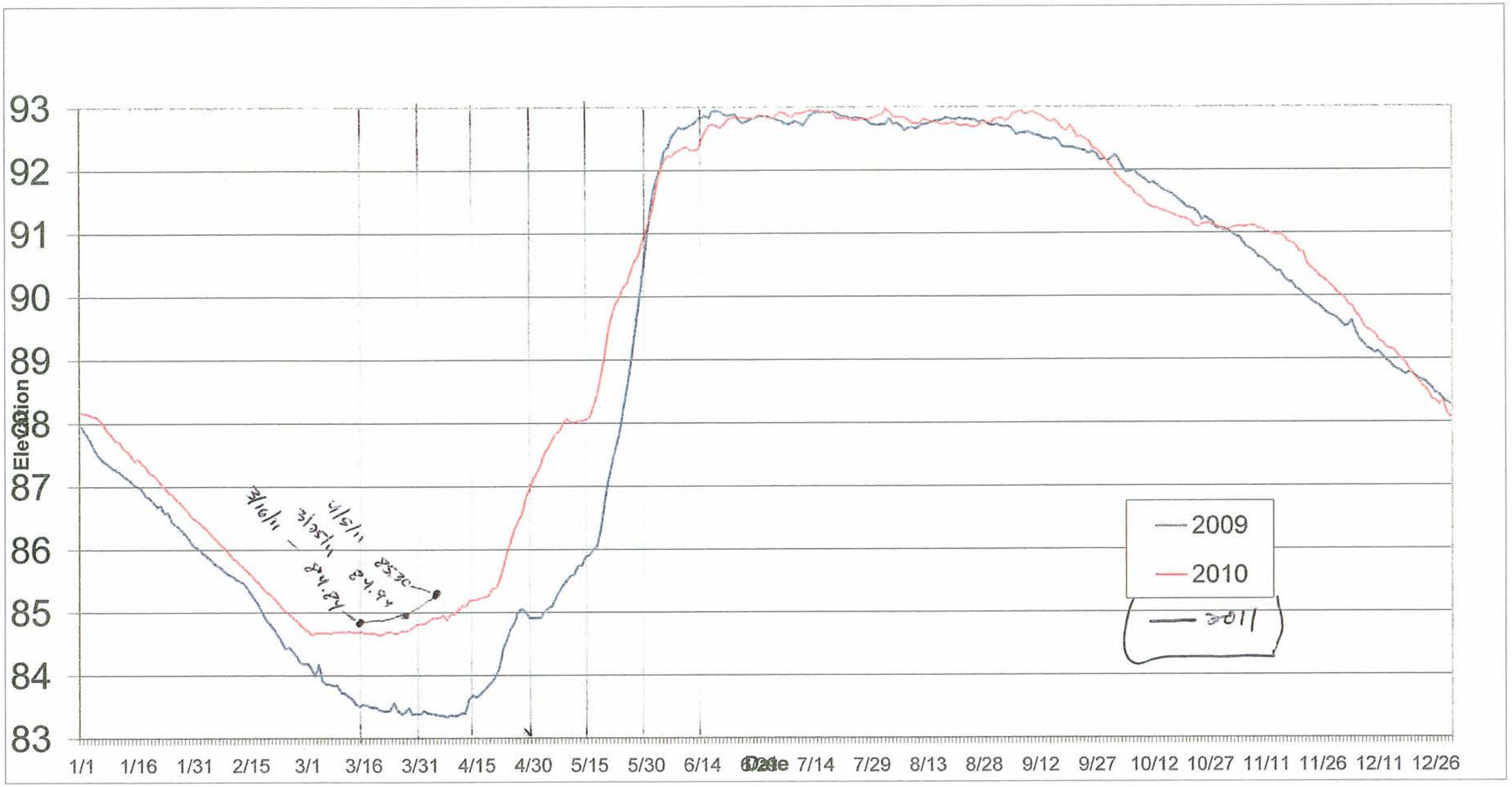
50,700
41,600
5/30/11
5/6/12 30,100
5/7/12 31,300
5/4/12 31,800
4/30/12
30,600
5/17/11 27,500
4/22/12
18,960
4/15/10
13,320
3/16/12 9,540
4/1/12
9090.
4,000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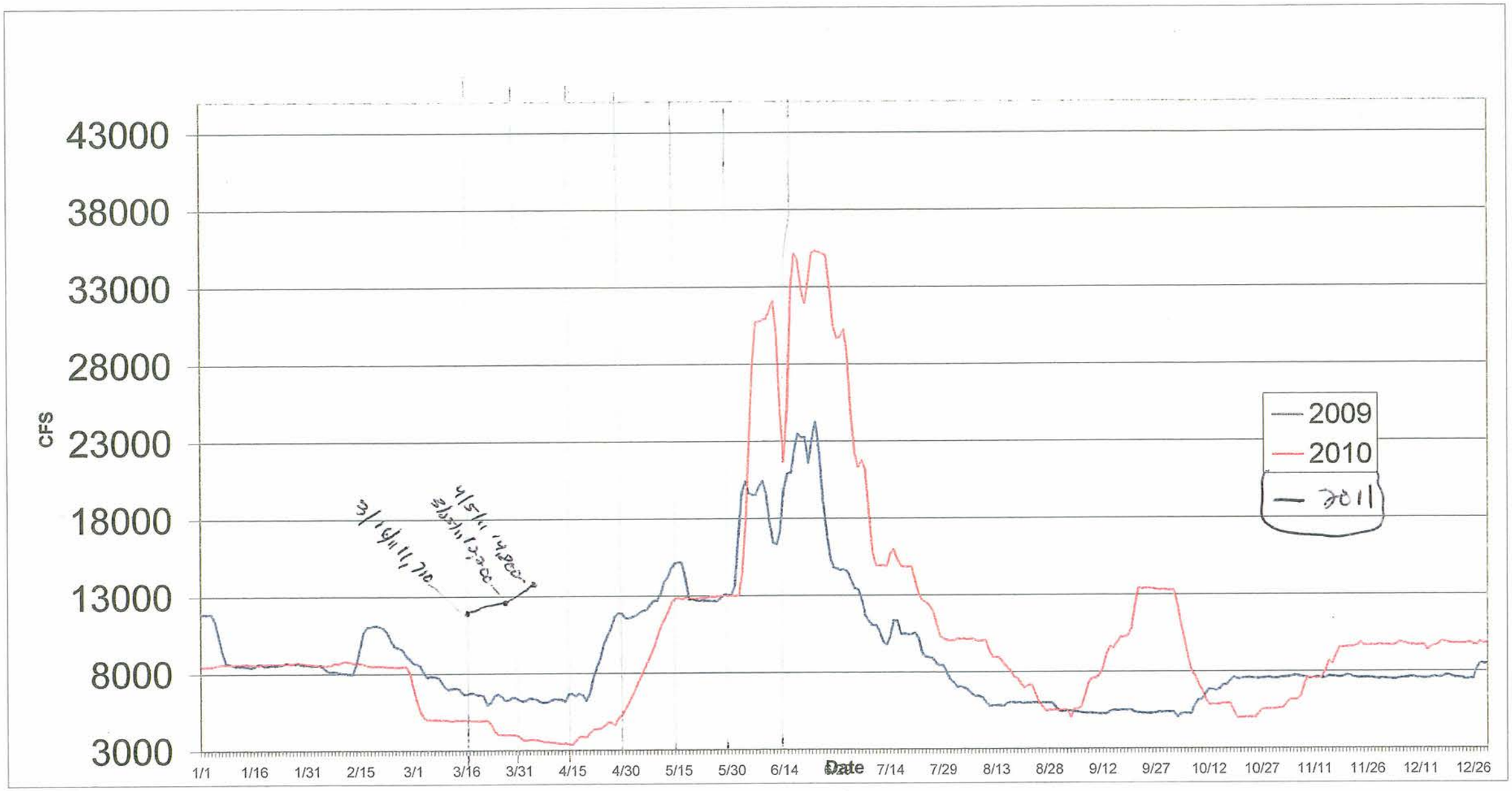
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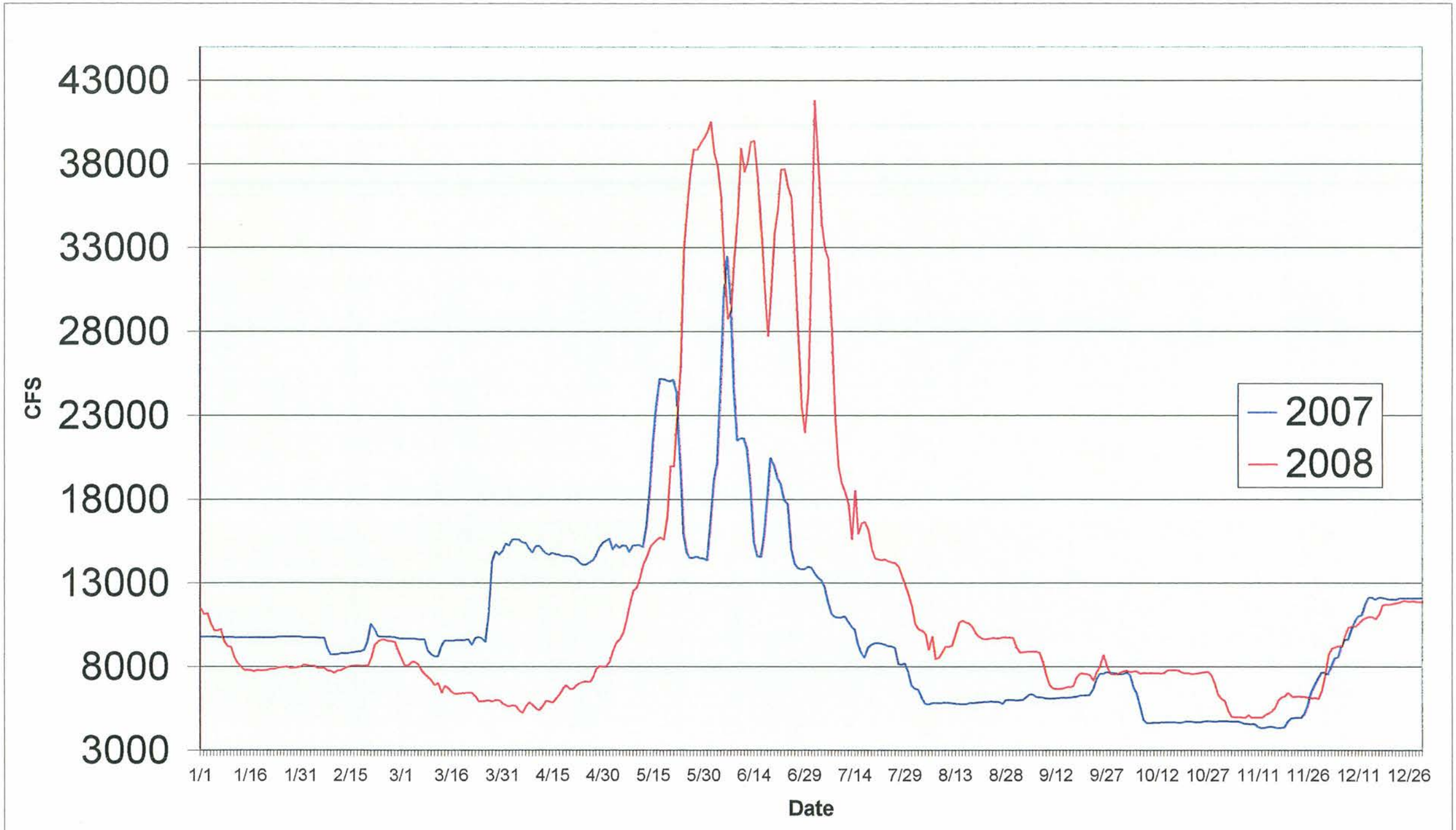
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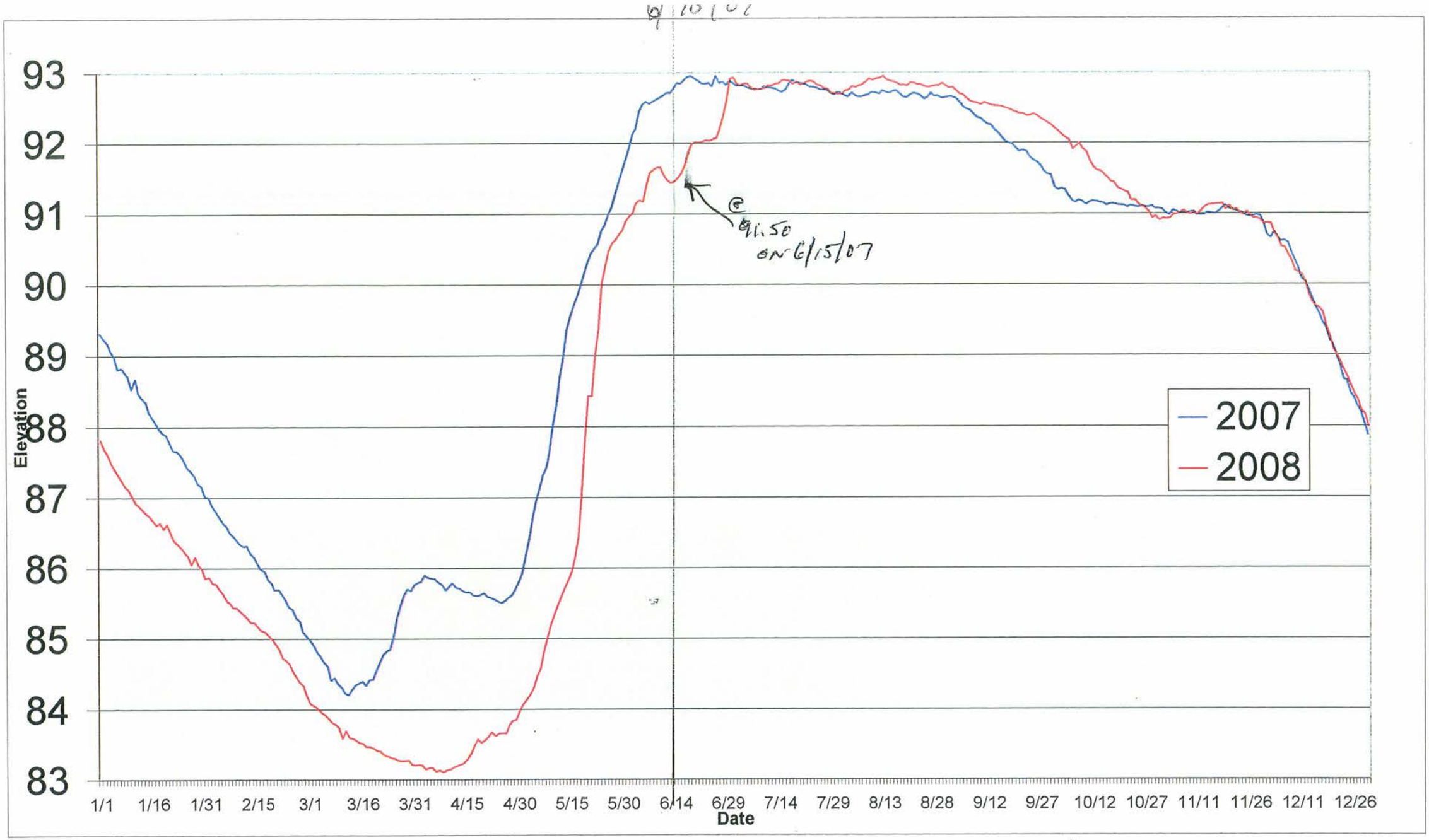
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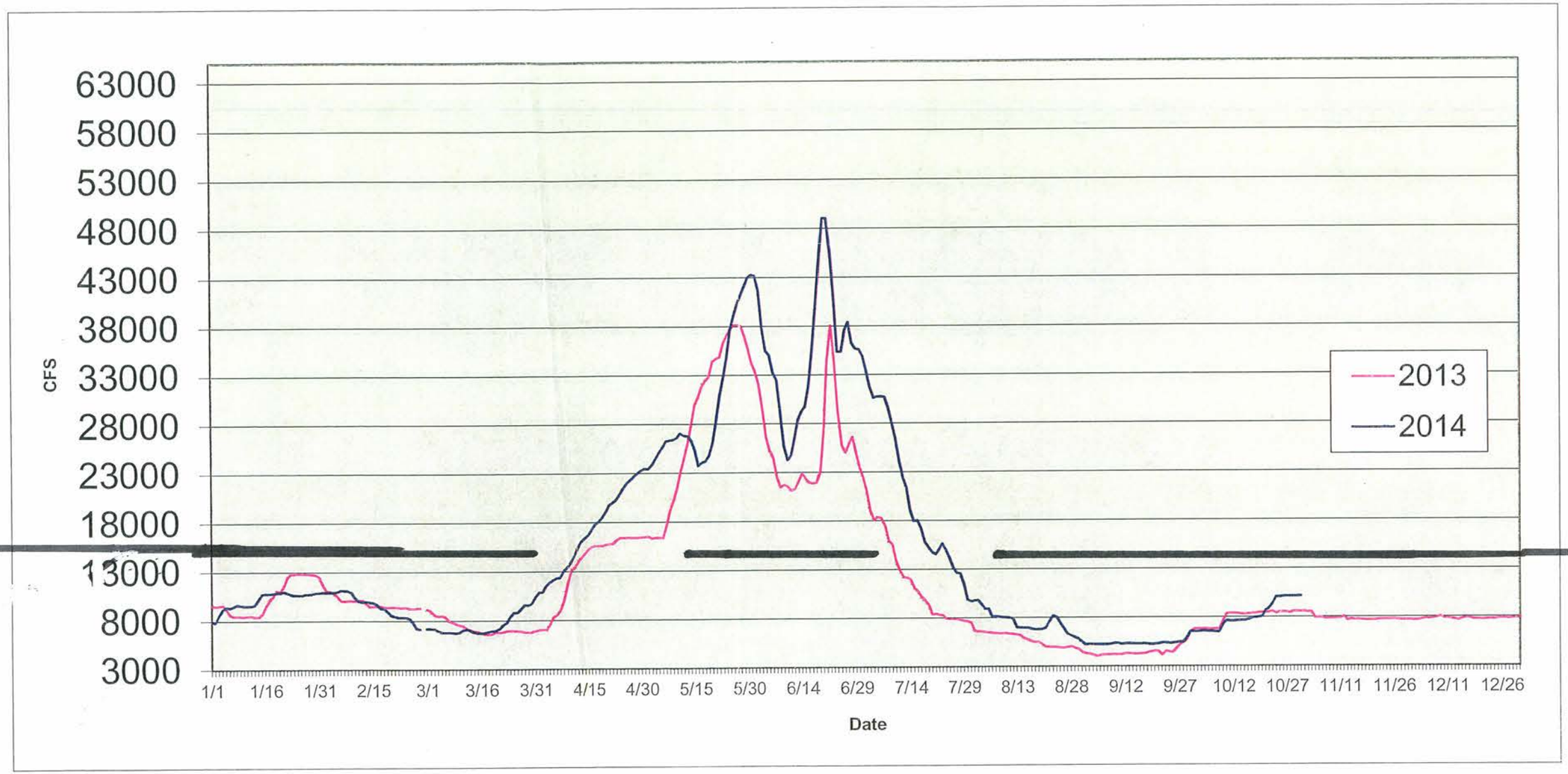
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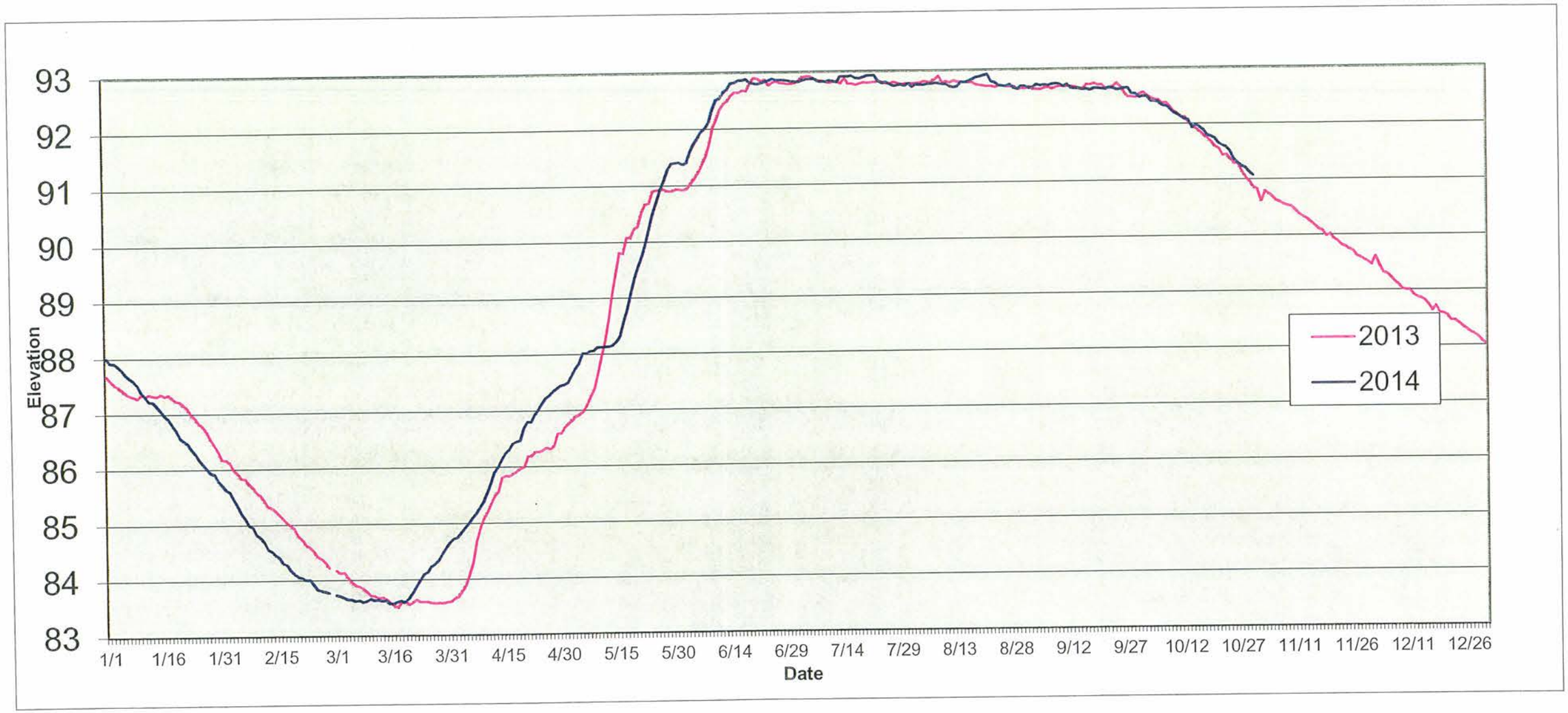
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Date
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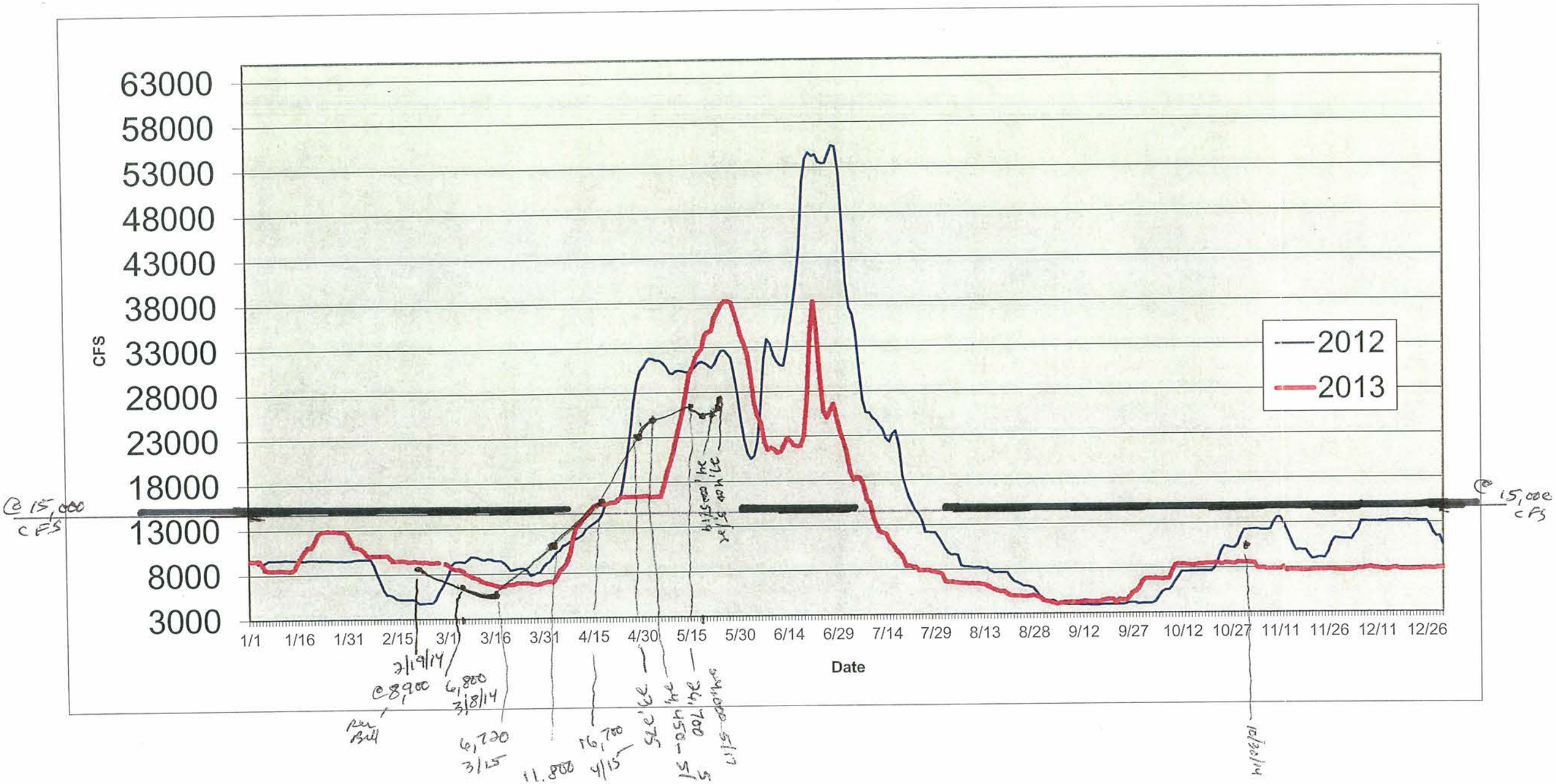
2014

883-4450

rec'd 5/7/14 M



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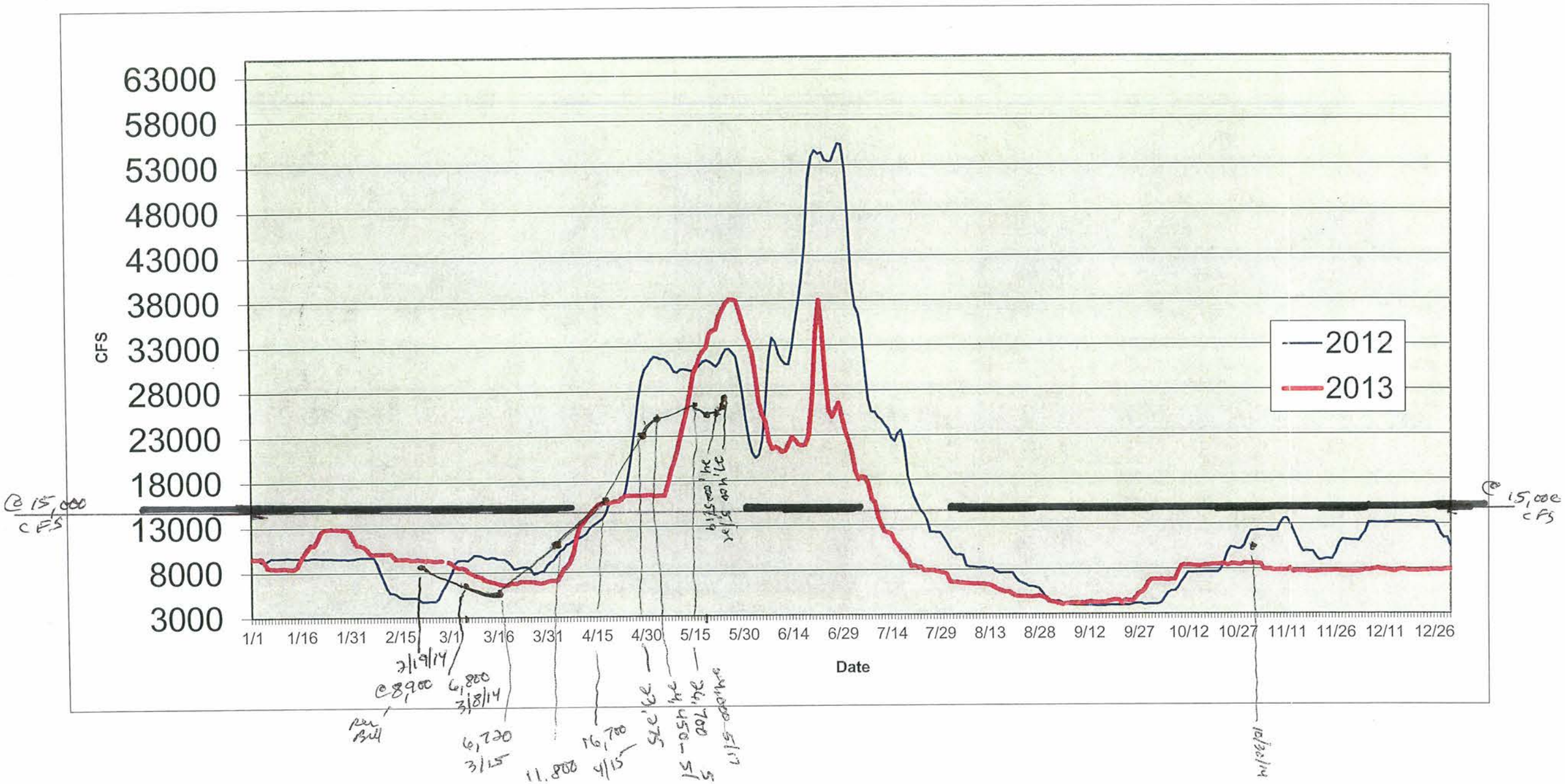
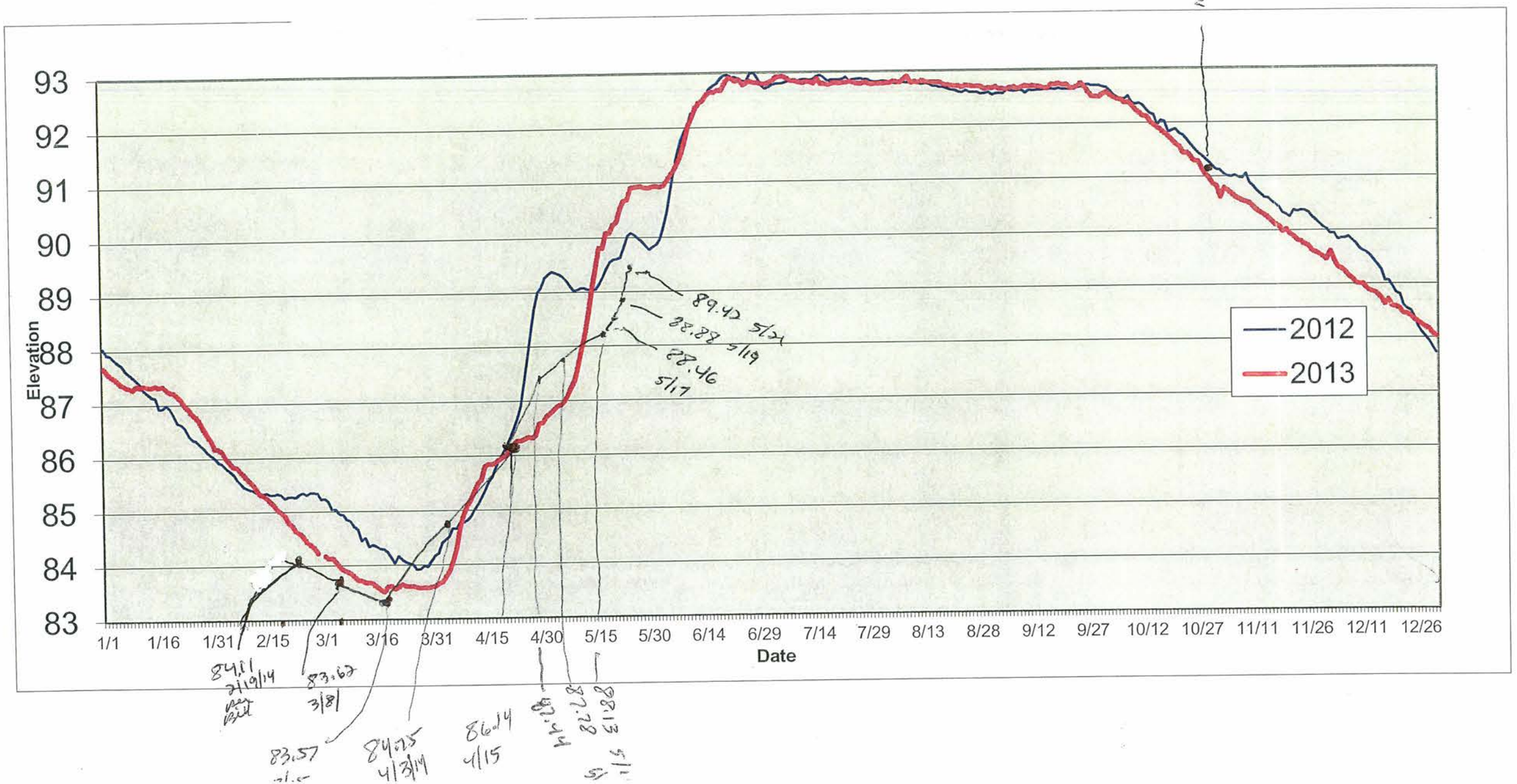
rec'd 5/7/14 KK

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2013
89.42 5/21
88.88 5/19
88.46 5/17
84.11 2/19/14
83.62 3/8
83.57
84.25 4/3/14
86.14 4/15
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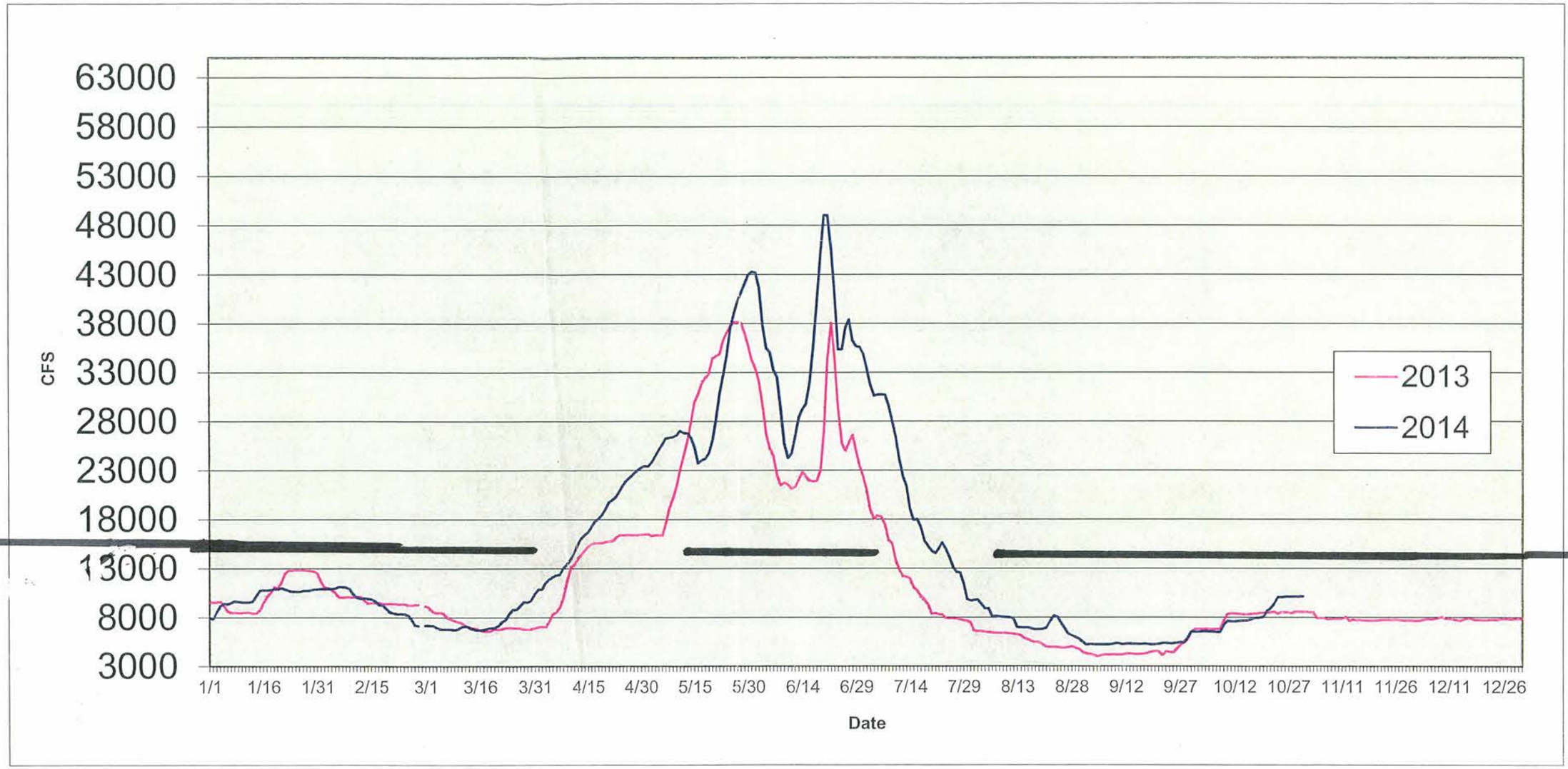
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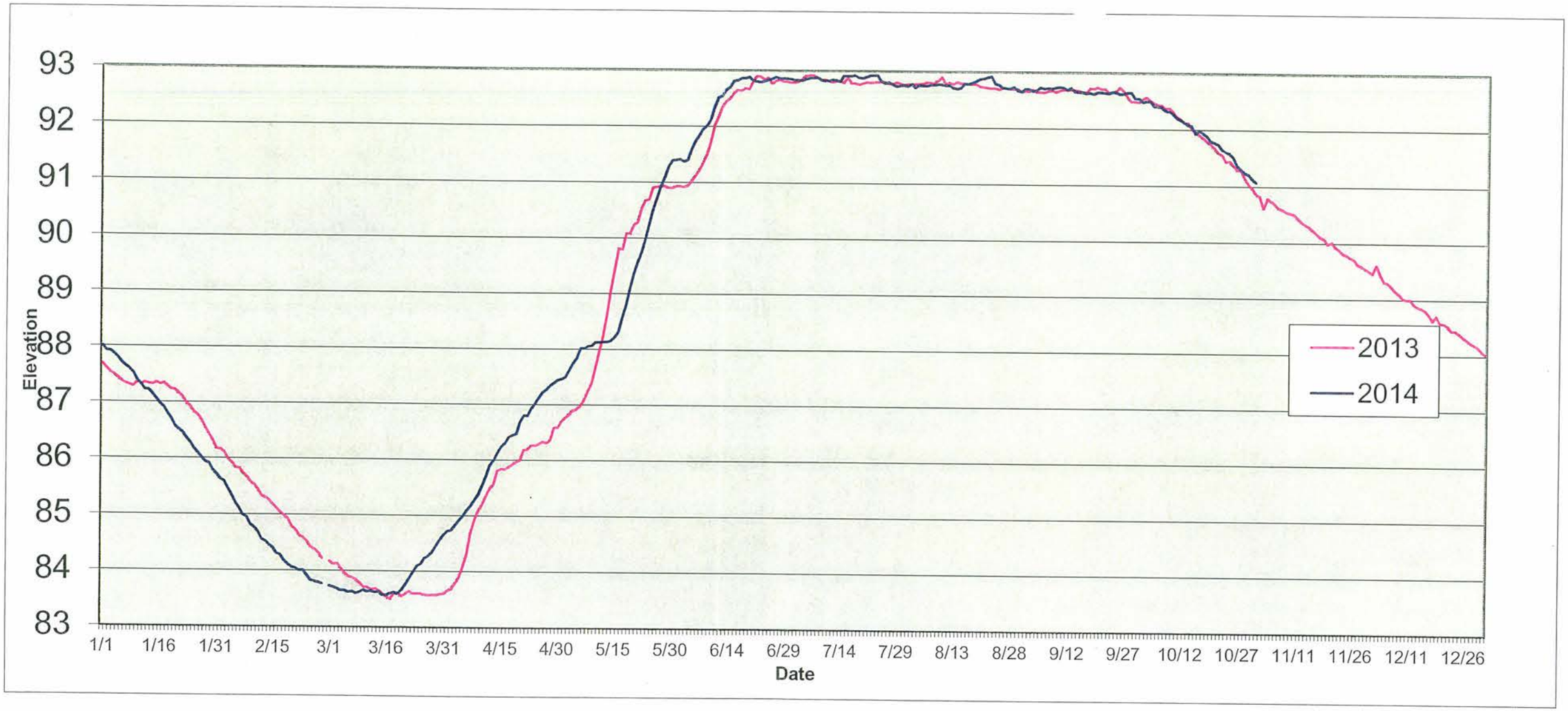
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Date
2013
2014

883 4450
Bill Stegal

883-3736

# FLATHEAD LAKE DRAWDOWN & FILL 2009 — 2008 — 2009 FALL / 2010 SPRING

DEB MATLOWAY 533 3508
CELL 491-5551
OFFICE 533 3510

FLATHEAD LAKE ELEVATION (FULL POND) 2893.00 FT. ABOVE SEALEVEL

FEBRUARY MARCH APRIL MAY JUNE JULY AUGUST SEPTEMBER OCTOBER NOVEMBER DECEMBER

93 92 91 90 89 88 87 86 85 84 83

4/9/09 — 96.73

99.65

12/30/09 88.17
1/1/10

88.17

6/4/10 91.11

6/15/10 90.15

5/25 89.31

5/13 88.82

5/15 88.27

5/10 88.69

5/1 89.04

4/25 89.04

4/15/10 89.91

4/1/10 85.58

3/31/10 84.81

3/31/10 84.68

3/30 84.67

3/31/10 84.69

3/31 84.69

3/5/10

3/1/10 84.75

3/1/10 84.64

85.27

85.29

85.29

84.94

11/5/09 84.94

11/1/09 84.84

12/1/09 84.94

12/1/09 84.94

12/1/09 84.94

FLATHEAD LAKE ELEVATION 289300 FT ABOVE SEALEVEL (FULL POND)

K&E 1 YEAR BY DAYS x 250 DIVISIONS KEUFFEL & ESSER CO. MADE IN U.S.A.

783-4430
883-3736

FLATHEAD LAKE DRAW DOWN & FILL

2007 2008

Above Full 6/18 6/30 93.95
6/15-6/18/09

For Survey

| | | |
|---|---|---|
| Wed 4/2/08 | 83.39 | 8 Am |
| Thr 4/3/08 | 83.30 | 8 Am |
| " " | 83.18 | 2 Pm |
| " " | 83.17 | 3 Pm |
| " " | 83.17 | 4 Pm |
| Fri 4/4/08 | 83.20 | 8 Am |
| Sun 4/6/08 | 83.13 | 8 Am |

Rich Bill Lech Kerr

PPL BF

Thur 4/3/08 3,893.7

DEB 533 3508
M Alonzy (CEL) 491-5551
3/10/09 NO REFILL TIL 4/15/09"
Lance 3510

1/1/08 87.96 1/5/09 87.54 1/10/09 87.32 1/15/09 87.07 1/22/09 86.26 1/25 86.44 1/29/09 86.33 2/5/09 85.76 2/15 85.52 2/23/09 85.47 2/28/09 85.45

3/1/08 84.18 3/15 83.55 3/31/08 83.37 4/6/08 83.13 4/10 83.11

5/15 25.67 5/30 25.74 5/15/09 25.37 5/10/09 25.31

6/1 6/5/08 93.67 6/10 93.64 6/15 93.50 6/20 93.23 6/25 93.16 6/30 93.08

6/10 91.99 6/15 91.66 6/20 91.30 6/25 91.47 6/30 91.16 6/1/09

5/30 90.60 5/24 90.59 5/27 90.37 5/31 89.89 5/25/08 89.89 5/28/08 89.88 5/31/08 89.87 5/31/09

Rock & Pointer slip just under water

5/30 40,000 5/27 36,900 5/22 33,000 6/15 35,041 6/10 35,041 6/20 30,320

2009 Highest 39,500 6/19

9/1/08 3893.83 9/15 3893.53 9/30 3893.04 10/15 3892.96 10/25 3892.61 11/1 3892.28 11/14 3892.09 12/1 3892.05 12/15 3892.03 12/20 3892.02 12/25 3892.01 12/30 3892.00 1/1/09 3892.00

6/30/09 Sun 3,900 3,700

9/1/75 9/1/76 9/15/76 10/25/76 11/1/76 11/14/76 12/1/76 12/15/76 12/20/76 12/25/76 12/30/76 1/1/77

Left Full Pool

Key: 1 YEAR BY DAYS x 250 DIVISIONS KEUFFEL & ESSER CO. MADE IN U.S.A.

# FLATHEAD LAKE DRAWDOWN & FILL — 2005 — 2006

FLATHEAD LAKE ELEVATION 2893.00 FT. ABOVE SEA LEVEL (FULLPOND)

CFS FLOW OUT

JANUARY FEBRUARY MARCH APRIL MAY JUNE JULY AUGUST SEPTEMBER OCTOBER NOVEMBER DECEMBER

93 92 91 90 89 88 87 86 85 84 83

55 50 45 40 35 30 25 20 15 10 5 0

2005

2006

1/1/07 89.27

2/1/07 90.91

2/1/07 2885.54

2/1/07 2885.69

2/1/07 89.88

2/1/07 9,780

2/1/07 9,750

2/1/07 9,780

2/1/07 9,780

5/26 90.67

5/25 90.51

5/26 89.34

5/15 88.55

5/26 36,700

5/25 35,440

5/30 31,000

5/16 24,000

5/16 2,900

6/5 6/6 6/5 6/5 6/5

# FLATHEAD LAKE DRAWDOWN & FILL 2003 — 2004 — 2005

FLATHEAD LAKE ELEVATION 2893.00 FT. ABOVE SEA LEVEL (FULL POND)

CFS FLOWOUT

JANUARY FEBRUARY MARCH APRIL MAY JUNE JULY AUGUST SEPTEMBER OCTOBER NOVEMBER DECEMBER

2893.4458
2893.3736 = 3128 CYPRESS
× 3141 RICH

LANGE 5533-3510
LINDSAY GULCH 3502
PETE SIMONICH 3417

5/19/05 91.55
5/18 91.48
5/13 91.13
5/8 91.05
5/8 90.69
5/5 90.47
5/3 90.41
5/1 90.34
4/26 89.87
4/22 89.70
4/20 89.57
4/15 88.85
4/10 88.31
4/5 88.07
3/31 87.33
3/10 87.33

5/19/05 33,700
5/18 26,139
5/13 22,120
5/8 18,080
5/5 14,912
5/3 14,800
5/1 14,800
4/24 13,800
4/23 13,800
4/22 11,700
4/21 9,800

2003

47 2893

K&E KEUFFEL & ESSER CO. MADE IN U.S.A.

# FLATHEAD LAKE DRAWDOWN & FILL

2002 — 2003 — 2004

JANUARY FEBRUARY MARCH APRIL MAY JUNE JULY AUGUST SEPTEMBER OCTOBER NOVEMBER DECEMBER

883 ÷ 3736 × 3140 ÷ 3141 RICH OFFICE

5/15 91.22

5/10 90.83

5/5 89.34

5/1 88.48

4/25 87.04

4/20 86.99

3/26/04 83.55

3/03 & 3/24 83.54 LOW

4/25/04 ABOVE AVG. PRECIP.

10/1/04 92.91

10/5 92.60

10/10 92.36

10/15 92.05

10/20 91.93

10/25 91.77

10/30 91.56

11/05 91.18

11/6 91.07

11/15 91.03

11/20 90.98

11/25 90.96

11/30

10/1/04

11/1/04

93 92 91 90 89 88 87 86 85 84 83

1 YEAR BY DAYS X 200 DIVISIONS KEUFFEL & ESSER CO.

FLATHEAD LAKE

2001 — 2002 — 2003

JANUARY FEBRUARY MARCH APRIL MAY JUNE JULY AUGUST SEPTEMBER OCTOBER NOVEMBER DECEMBER

FLATHEAD LAKE ELEVATION 2892.00 FT. ABOVE SEA LEVEL (Full Pond)

FLOW OUT CFS

BIGFORK GOES @ 90.00

BIGFORK POSSIBLE W/ BIG FENDERS @ 89.50 MAYBE 89.00 ?

11/1/03 88.50 5/7/03

11/1/04 88.6

87.54 4/3/03

4/13 87.24

5/29 90.21

5/27/03 89.55

5/19/03 88.90

5/9/03 88.75

5/9/04 88.54

5/19/04 88.60 5/19/03

87.16 11/7/04

87.10 11/7/03

2001

6,500

4000 7/15

4/9

4/15 9,000

10,000

11,000 cfs 4/19/04

11,000 cfs 4/19/03

11,500 cfs 5/15/04

11,500 cfs 5/15/03

11,900 cfs 5/20/03

47 2893
KEUFFEL & ESSER CO. MADE IN U.S.A.
1 YEAR BY DAYS X 25th DIVISIONS

# FLATHEAD LAKE DRAWDOWN AND FILL

owners copy

2000 ——  2001 ——

FLATHEAD LAKE ELEVATION 2893.00 FT ABOVE SEA LEVEL (FULL POND)

CFS FLOW OUT

JANUARY FEBRUARY MARCH APRIL MAY JUNE JULY AUGUST SEPTEMBER OCTOBER NOVEMBER DECEMBER

93 92 91 90 89 88 87 86 85 84 83

55 50 45 40 35 30 25 20 15 10 5 0

2000

2001

90.86

90.05

89.24

85.93

85.01

84.32

87.19

92.77 92.60 92.06 10/30

91.02

90.05

88.17

11/1/02

11/15/02

3/1/02

3/15/02

3/20/02

4/1/02

5/30/02

5/25/00

12/31/02

12/15/01

12/1/01

11/1/01

# FLATHEAD LAKE DRAWDOWN AND FILL

1999 —— 2000 ——

FEB 10 15 25 | 5 MARCH 10 15 20 25 | 5 APRIL 10 15 20 25 | 5 MAY 10 15 20 25 | 5 JUNE 10 15 20 25 | 5 JULY 10 15 20 25 | 5 OCTOBER 25 | 5 NOV

FLATHEAD LAKE ELEVATION (FEET ABOVE SEA LEVEL (FULL POND))

CUBIC FEET PER SECOND (CFS)

2883.4450

2000

92.58

92.4

92.27

6/18

6/15

91.73

6/14/01

6/7/01

2000

99

11/30/99

out 90.00

90.72

90.53

5/31

90.05

5/30

88.95

88.79

5/28

2001

88.70

5/24

88.48

5/22

5/20

87.87

87.38

5/18

87.23

5/15

87.03

5/12

5/16

5/13

86.39

86.40

4/30

4/25

84.12

4/16/01

2001

85.63

85.54

85.09

3/31

3/15/01

3/23/01

84.74

3/10/01

99

2000

8000

9000

9500

9000

6/7/01

6/14/01

5/12

5/16

5/18

5/24

5/11/01

64% SNOWPACK

61% HUNGRY HORSE INFLOW

9851

MAY

CFS

86

85

84

83

# FLATHEAD LAKE DRAWDOWN AND FILL

1997 1998

JANUARY FEBRUARY MARCH APRIL MAY JUNE JULY AUGUST SEPTEMBER OCTOBER NOVEMBER DECEMBER

5 10 15 20 25

93 92 91 90 89 88 87 86 85 84 83

55 50 45 40 35 30 25 20 15 10 5 0

'97

'98

FLATHEAD LAKE ELEVATION 2893 FT. ABOVE SEALEVEL (FULL POND)

CFS FLOWOUT

47 2893

K+E 1-YEAR BY-DAYS x 250 DIVISIONS
KEUFFEL & ESSER CO. MADE IN U.S.A.

# FLATHEAD LAKE PROJECTED DRAWDOWN AND FILL

1996 1997

ELATHEAD LAKE ELEVATION 2893 FT. ABOVE SEA LEVEL (FULL POND)

CFS FLOW OUT

93 92 91 90 89 88 87 86 85 84 83

55 50 45 40 35 30 25 20 15 10 5 0

MARCH APRIL JUNE AUGUST SEPTEMBER OCTOBER NOVEMBER DECEMBER

JANUARY FEBRUARY MARCH APRIL MAY JUNE JULY AUGUST SEPTEMBER OCTOBER NOVEMBER DECEMBER

96 97 96 97 96 97

≈52,400 CFS AVERAGE

≈61,000 CFS

# FLATHEAD LAKE PROJECTED DRAWDOWN AND FILL

1996 1997

JANUARY FEBRUARY MARCH APRIL MAY JUNE JULY AUGUST SEPTEMBER OCTOBER NOVEMBER DECEMBER

FLATHEAD LAKE ELEVATION 2893 FT. ABOVE SEA LEVEL (FULL POND)

CFS FLOW OUT

93 92 91 90 89 88 87 86 85 84 83

55 50 45 40 35 30 25 20 15 10 5 0

JOHN VANMETER NEW HIGH OF HYARC FOR APRIL

BILL R. WORK AND MCL CAY

'97

2/20/97 86.41

3/1/97 85.20

3/23 84.90

4/14/97 4.39

4/14/97 85.26

4/30 86.36

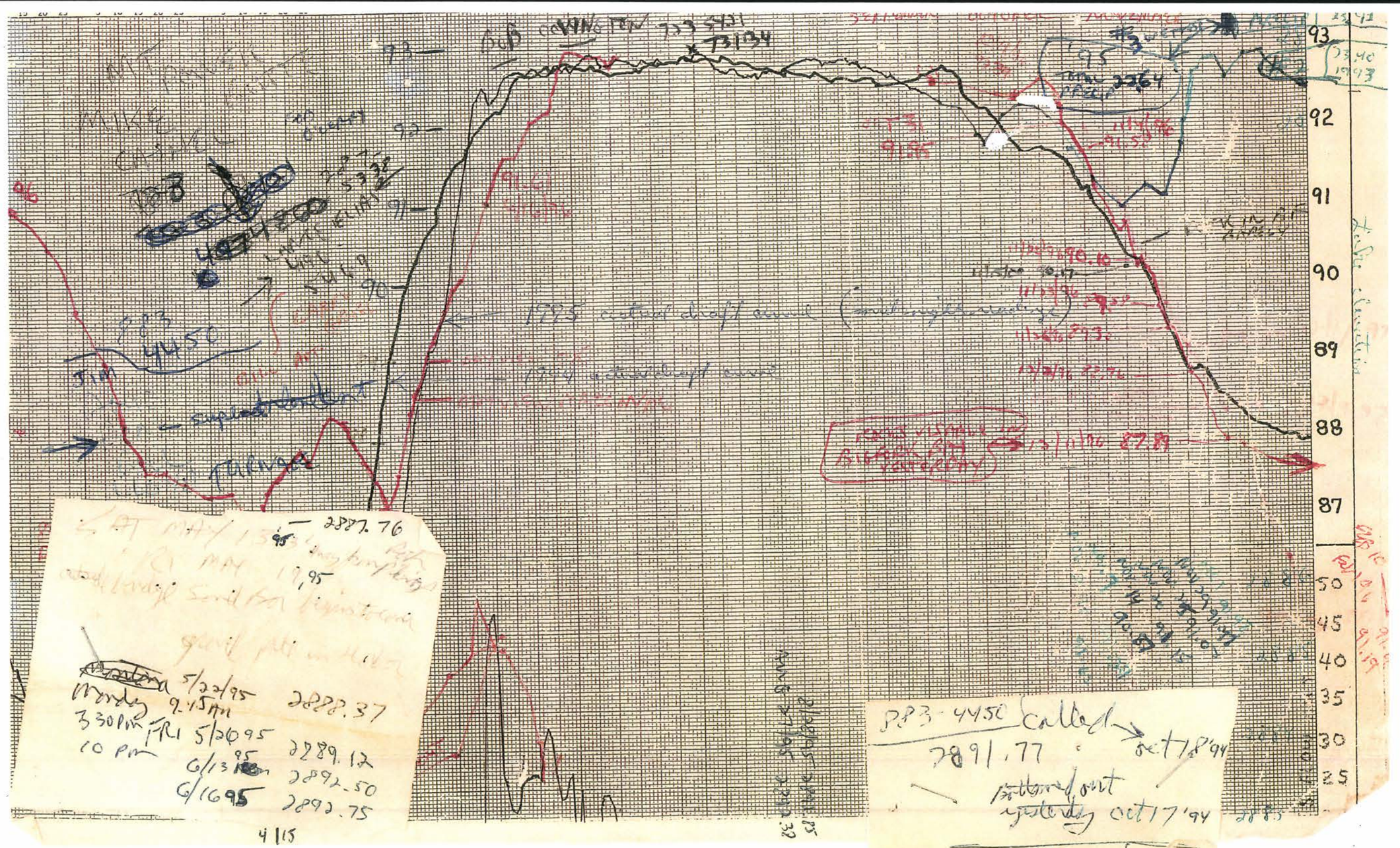
'97

#13

[illegible] 84.98

[illegible]

K+E 1 YEAR BY DAYS x 250 DIVISIONS KEUFFEL & ESSER CO. MADE IN U.S.A. 47 2893


93
92
91
90
89
88
87
50
45
40
35
30
25
1775 actual draft count (multiple weekdays)
1775 adjusted draft count
2887.76
5/22/95 2888.37
5/30/95 2889.12
6/13/95 2892.50
6/16/95 2892.75
883-4450 called → Oct 18'94
2891.77
settled out yesterday Oct 17'94
Scheduled for '94
91.50 Oct 31
last mail payday 11
2891.00 until
CAROL JAMES
4340

FLATHEAD LAKE — PROJECTED DRAWDOWN AND FILL — 1975 — 1973

FLATHEAD LAKE ELEVATION (Full pond 2893FT. above SEA LEVEL)

93 92 91 90 89 88 87 86 85 84 83

FEET

55 50 45 40 35 30 25 20 15 10 5 0

FLOW OUT 1000's CFS

1000's CFS FLOW IN

50 45 40 35 30 25 20 15 10 5 0

JANUARY 5 10 15 20 25 | FEBRUARY 5 10 15 20 25 | MARCH 5 10 15 20 25 | APRIL 5 10 15 20 25 | MAY 5 10 15 20 25 | JUNE 5 10 15 20 25 | JULY 5 10 15 20 25 | AUGUST 5 10 15 20 25 | SEPTEMBER 5 10 15 20 25 | OCTOBER 5 10 15 20 25 | NOVEMBER 5 10 15 20 25 | DECEMBER 5 10 15 20 25

93 92 91 90 89 88 87

95 95 94 94 97 94

FLATHEAD LAKE ELEVATION 2918 FT. ABOVE SEA LEVEL DATUM

FEBRUARY MARCH APRIL MAY NOVEMBER DECEMBER

93 92 91 90 89 88 87 86 85 84 83

94 93

CFS FLOW OUT

55 50 45 40 35 30 25 20 15 10 5 0

JANUARY FEBRUARY MARCH APRIL MAY JUNE JULY AUGUST SEPTEMBER OCTOBER NOVEMBER DECEMBER

# PROJECTED DRAWDOWN AND FILL

1992 — 1993

MAY · JUNE · JULY · AUGUST · SEPTEMBER · OCTOBER · NOVEMBER · DECEMBER

projected curve

1992 actual curve

1993 actual curve

FLATHEAD LAKE ELEVATION 2893 FT. ABOVE SEA LEVEL

CFS FLOW OUT

47 2893

KEUFFEL & ESSER CO. 1 YEAR BY DAYS x 255 DIVISIONS MADE IN U.S.A.

# FLATHEAD LAKE — PROJECTED DRAWDOWN AND FILL — 1992 — 1993

JANUARY 5 10 15 20 25 | FEBRUARY 5 10 15 20 25 | MARCH 5 10 15 20 25 | APRIL 5 10 15 20 25 | MAY 5 10 15 20 25 | JUNE 5 10 15 20 25 | JULY 5 10 15 20 25 | AUGUST 5 10 15 20 25 | SEPTEMBER 5 10 15 20 25 | OCTOBER 5 10 15 20 25 | NOVEMBER 5 10 15 20 25 | DECEMBER 5 10 15 20 25

93 92 91 90 89 88 87

55 50 45 40 35 30 25 20 15 10 5 0

FLATHEAD LAKE ELEVATION 2893 FT. ABOVE SEA LEVEL

CFS FLOW OUT

CFS FLOW OUT

92 93

JANUARY 10 15 20 25 | FEBRUARY 5 10 15 20 25 | MARCH 5 10 15 20 25 | APRIL 5 10 15 20 25 | MAY 5 10 15 20 25 | JUNE 5 10 15 20 25 | JULY 5 10 15 20 25 | AUGUST 5 10 15 20 25 | SEPTEMBER 5 10 15 20 25 | OCTOBER 5 10 15 20 25 | NOVEMBER 5 10 15 20 25 | DECEMBER 5 10 15 20 25

47 2893
K+E 1 YEAR BY DAYS x 250 DIVISIONS
KEUFFEL & ESSER CO. MADE IN U.S.A.

# FLATHEAD LAKE — PROJECTED DRAWDOWN AND FILL — 1991 — 1992

JANUARY 5 10 15 20 25 | FEBRUARY 5 10 15 20 25 | MARCH 5 10 15 20 25 | APRIL 5 10 15 20 25 | MAY 5 10 15 20 25 | JUNE 5 10 15 20 25 | JULY 5 10 15 20 25 | AUGUST 5 10 15 20 25 | SEPTEMBER 5 10 15 20 25 | OCTOBER 5 10 15 20 25 | NOVEMBER 5 10 15 20 25 | DECEMBER 5 10 15 20 25

93 92 91 90 89 88 87 86 85 84 83

corrected curve

FLATHEAD LAKE ELEVATION 2893FT ABOVE SEALEVEL

47 2893

K&E 1 YEAR BY DAYS x 250 DIVISIONS
KEUFFEL & ESSER CO. MADE IN U.S.A.

55 50 45 40 35 30 25 20 15 10 5 0

CFS FLOW OUT

CFS FLOW OUT

JANUARY 5 10 15 20 25 | FEBRUARY 5 10 15 20 25 | MARCH 5 10 15 20 25 | APRIL 5 10 15 20 25 | JUNE | JULY | AUGUST | SEPTEMBER 5 10 15 20 25 | OCTOBER 5 10 15 20 25 | NOVEMBER 5 10 15 20 25 | DECEMBER

# FLATHEAD LAKE — PROJECTED DRAWDOWN AND FILL — 1990 — 1991

JANUARY 5 10 15 20 25 | FEBRUARY 5 10 15 20 25 | MARCH 5 10 15 20 25 | APRIL 5 10 15 20 25 | MAY 5 10 15 20 25 | JUNE 5 10 15 20 25 | JULY 5 10 15 20 25 | AUGUST 5 10 15 20 25 | SEPTEMBER 5 10 15 20 25 | OCTOBER 5 10 15 20 25 | NOVEMBER 5 10 15 20 25 | DECEMBER 5 10 15 20 25

FLATHEAD LAKE ELEVATION +2800 FT. ABOVE SEA LEVEL

93 92 91 90 89 88 87 86 85 84 83

CFS FLOW OUT

55 50 45 40 35 30 25 20 15 10 5 0

CFS FLOW OUT

50 45 40 35 30 25 20 15 10 5 0

K&E 1 YEAR BY DAYS x 250 DIVISIONS
KEUFFEL & ESSER CO. MADE IN U.S.A.

47 2893

# FLATHEAD LAKE — PROJECTED DRAWDOWN AND FILL — 1992 — 1991

JANUARY · FEBRUARY · MARCH · APRIL · MAY · JUNE · JULY · AUGUST · SEPTEMBER · OCTOBER · NOVEMBER · DECEMBER

1990 actual curve

1992 actual curve - (mid-night readings)

Projected draft curve

FLATHEAD LAKE ELEVATION +2800 FT. ABOVE SEA LEVEL

93 92 91 90 89 88 87 86 85 84 83

55 50 45 40 35 30 25 20 15 10 5 0 CFS Flow out

93 92 91 90 89 88 87

50 45 40 35 30 25 20 15 10 5 0 CFS Flow out

47 2893

K+E 1 YEAR BY DAYS x 250 DIVISIONS KEUFFEL & ESSER CO. MADE IN U.S.A.

# FLATHEAD LAKE — PROJECTED DRAWDOWN AND FILL — 1990 — 1991

ELATHEAD LAKE ELEVATION +2800 FT. ABOVE SEA LEVEL

CFS Flow out

1990 actual curve

1990 actual curve - (mid-night readings)

Projected draft curve

JANUARY FEBRUARY MARCH APRIL MAY JUNE JULY AUGUST SEPTEMBER OCTOBER NOVEMBER DECEMBER

93 92 91 90 89 88 87 86 85 84 83

55 50 45 40 35 30 25 20 15 10 5 0

47 2893

K&E 1 YEAR BY DAYS x 250 DIVISIONS
KEUFFEL & ESSER CO. MADE IN U.S.A.

Mr. Glen Swing
PO Box 1012
KR 59901 LUCKY SUITE

WATER FLOW DATA
MAX IN AND OUT.

1948

| | | |
|---|---|---|
| Flow in Max--May 27, | 101170 csf. | |
| Flow out " --June 6, | 72900 | " |
| Max Elev. --June 7. | 2895.93 | |

1949

| | | |
|---|---|---|
| Flow in Max--May 15. | 76340 | " |
| Flow out Max-May 31 June 1 | 46490 | " |
| Max Elev. June 27. | 2893.06 | |

1950

| | | |
|---|---|---|
| Flow in Max--June 6. | 89160 | " (Caused hi wind |
| Flow out Max-June 23 | 65100 | csf |
| Max Elev. June 25. | 2894.65 | |

1951

| | | |
|---|---|---|
| Flow in Max--May 13. | 80400 | csf |
| Flow out Max- June 16. | 62350 | " |
| Max Elev. June 17. | 2892.98 | |

1952

| | | |
|---|---|---|
| Flow in Max--Apr. 29. | 54960 | " |
| Flow out Max-May 25. | 40450 | " |
| Max Elev. July 11. | 2893.05 | |

Max. & Min. Flow.

1953

| | | |
|---|---|---|
| Flow in Max -- June 14. | 54900 | csf. |
| Flow out Max.- June 4. | 54200 | " |
| Max. Elev. 2893.0 July 25. | | |

1954.

| | | |
|---|---|---|
| Flow in Max--May 21. | 72340 | " |
| Flow out Max. July 3. | 55400 | " |
| Max. Elev. 2893.05 July 28. | | |

1955.

| | | |
|---|---|---|
| Flow in Max. June 24. | 48400 | " |
| Flow out Max. June 18. | 45800 | " |
| Max. Elev. 2893.0 July 2. | | |

1956.

| | | |
|---|---|---|
| Flow in Max. July 7. | 71800 | " |
| Flow out Max. June 7. | 57800 | " |
| Max. Elev. July 7. 2893.06 | | |

1957.

| | | |
|---|---|---|
| Flow in Max. May 23. | 54830 | " |
| Flow out Max. May 23. | 47600 | " |
| Max. Elev. 2893.0 July 5. | | |

1958.

| | | |
|---|---|---|
| Flow in Max. May 27. | 59920 | " |
| Flow out Max. May 27. | 56950 | " |
| Max. Elev. June 9. 2893.01. | | |

Max. & Min Flow Cont.

1959.

| | | |
|---|---|---|
| Flow in Max. --- June 23, | 66,880 | |
| Flow out Max.-- June 24, | 52,400 | |
| Max. Elev. Sept. 16, | 2893.01 | |

1960.

| | | |
|---|---|---|
| Flow in Max. -- June 4, | 57,520 | |
| Flow out Max. - June 18, | 51,500 | |
| Max. Elev. 2893.02 July 10 | | |

1961

| | | |
|---|---|---|
| Flow in Max.-- May 27 | 64,700 | |
| Flow out Max. -- June 8 | 52,400 | |
| Max. Elev. ---- July 5 | 2893.01 | |

1962

| | | |
|---|---|---|
| Flow in Max.-- May 30 | 40,290 | |
| Flow out Max. - May 31 | 39,850 | |
| Max. Elev. --- July 2 | 2893.0 | |

1963

| | | |
|---|---|---|
| Flow in Max.--- June 2 | 36,300 | |
| Flow out Max.-- July 1 | 39,300 | |
| Max. Elev. -- June 30 | 2893.0 | |

Several days in Aug. July and Sept.

1964

| | | |
|---|---|---|
| Flow in Max.-- June 10 | 113,400 | |
| Flow out Max. -June 12 | 63450 | |
| Max. Elev.-- June 12 | 2894.15 | |

1965

| | | |
|---|---|---|
| Flow in Max.--- June 20 | 53830 | |
| Flow out Max.-- June 20 | 50900 | |
| Max Elev.----- July 20 | 2893.00 | |

1966

| | | |
|---|---|---|
| Flow in Max. --- May 31 | 49630 | |
| Flow out Max. -- June 2 | 39900 | |
| Max. Elev. --- July 10 | 2893.0a | |

1967

| | | |
|---|---|---|
| Flow in Max - - - | 60,060 | May 24 |
| Flow out Max - - | June 15 | 46,000 |
| Max elev - - - | July 4 | 2893.00 |

Min Lake Elevation recorded since 1922 → 2881.07
December 5, 1936 MMH

Max. Lake Elevation recorded since 1922 → 2896.26
June 19, 1933
Flow 108,000 CSF

F.W. Bard - Pump Sta. - Elev. 2894.4

Bill

I hope some of this info information will be of help to you. I got it out of some old records one of the others have left behind.

Don Kuehl

SENATE JUDICIARY
Exhibit No. 19
Date: 2/16/15
Bill No. SB262

DAILY INTER LAKE



# OPINION

# Water is clear, but compact isn't

## Inter Lake editorial

A massive PR campaign is flooding over Western Montana in support of a proposed water-rights compact between the Confederated Salish and Kootenai Tribes, the state of Montana and the United States.

The latest wave of information came from the governor's office last week in response to a letter sent by the Flathead County Board of Commissioners in opposition to the water compact.

Gov. Steve Bullock told the commissioners — politely — that "many of [their] concerns are rooted in significant misunderstandings about the Compact" and he sent the commissioners a memorandum from his chief legal counsel, Andrew Huff, detailing the state's argument that the water compact is a "fair compromise."

Huff wrote that he doesn't believe the county's opposition to the compact is well-founded, but it seems to us that he does nothing to reassure the county.

Take, for instance, the county's concern that the proposed compact is the only compact in Montana to include off-reservation water rights. Huff agrees that the commissioners are correct, but simply tries to make it seem like the tribes are doing everyone a favor "by agreeing to cede the vast majority of its off-reservation water rights claims."

According to Huff, these claims cover about half the state, "and would, if pressed by CSKT, result in significant disruption to the statewide water adjudication proceedings."

It is this threat of tribal claims on water from here to Butte that has the state worried, and deservedly so, but it should be noted that just because the tribes have made claims to water rights doesn't mean a water court would agree with them.

The argument hinges entirely on the Hellgate Treaty of 1855 that created the Flathead Reservation. Huff and other compact supporters argue that because Article III of the treaty establishes for the Indians a "right of taking fish" outside of the reservation, they therefore somehow have the right to control water rights in 11 counties.

But hold on. The actual language of the treaty says the Flathead Nation has "the right of taking fish at all usual and accustomed places, in common with the citizens of the Territory..." That's the crucial language on which the entire water compact is based, and it gives us considerable heartburn. If the right to take fish is held "in common with" the rest of the citizens of Montana, then it cannot be construed to give the Salish and Kootenai special rights. This is just simple logic.

Well, say the lawyers working for the water compact commission, the tribes need to exercise other rights in order to be able to ensure themselves the right to take fish, and therefore this compact will guarantee them control over the water and thus the fish.

But Article I of the Hellgate Treaty obviates that argument. By signing the treaty, "The said confederated tribes of Indians hereby cede, relinquish and convey to the United States all their right, title and interest in and to the country occupied or claimed by them" except for on the Flathead Reservation itself.

Legally, in other words, the whole effort to gain control of water rights off the reservation should have no validity whatsoever except by ignoring the very document that these rights are supposedly obtained from.

Yet the state, without regard to the best interest of its own citizens, is arguing that because the Hellgate Treaty grants "off-reservation fishing rights" to the tribes it therefore necessarily also grants the tribes a right to control the state's water in order to guarantee the quality of its tribal fishing.

That, in short, is why thousands of Montanans are outraged. As a state of fisher men and women, we know full well that the right to take fish does not guarantee a right to catch fish.

We also have enough common sense to know when something is fishy, and the state's eagerness to turn over to the tribes essential control over massive quantities of water without getting anything in return is puzzling at best.

We've already expressed our own reservations about the water compact, from both a procedural and substantive point of view, and cautioned legislators not to approve the proposal unless they know exactly what's in the compact and that it won't hurt Montanans now or in the future.

Gov. Bullock and counselor Huff's arguments notwithstanding we don't think that test has yet been met.

1/30/15

DAILY INTER LAKE

# Water compact is fatally flawed

By GARY SAUREY

Let's review where we are with respect to the recently concluded negotiations by the Reserved Water Rights Compact Commission. On Jan. 12 the commission voted and ratified the latest draft, which had been hastily published for public review only the middle of the previous week.

**Guest opinion**

In fact, many of the appendices, which are crucial to the final makeup of the compact, are still under revision. As a result, the public has not had time to adequately review nor comment on the final draft, nor has it had any assurance that any comments made will be addressed by the commission. This is a parody of the public participation process, and could only be corrected by delaying any action to allow for adequate review and comment by the public before any vote. Unfortunately, the commission chose to rush forward and cram this down our throats.

Now, let's see whether the commission has fulfilled its duty to represent the state of Montana and its citizens in these negotiations with the Confederated Salish and Kootenai Tribes and the U.S. government, negotiating on behalf of the tribes.

This unelected commission was empowered by the Legislature to "conclude compacts for the equitable division and apportionment of waters between the state and its people and the several Indian tribes claiming reserved water rights within the state" (MCA 85-2-701). Note the word "reserved" and the word "water." Nothing in the law speaks of rights to fish, and by allowing the tribes and the U.S. to bring in negotiations about aboriginal rights, and accept the premise that those can somehow be characterized as a water right, the commission has failed miserably in its duty to represent the state and its citizens in these negotiations.

This has allowed the tribes to expand the scope of the areas under negotiation much beyond the reservation, and to use the fear of protracted litigation and the tactic of giving up that which it did not have in the first place in return for vastly expanded "reserved" on-reservation water rights as well as unprecedented off-reservation water rights. By continuing to assert aboriginal

not be based upon "they have been good neighbors," "it was theirs in the first place," "it's good for fish," or "water rights attorneys will be getting rich if this compact does not pass," but rather, whether or not the compact results in an "equitable division and apportionment of waters between the state and its people and the... tribes." I submit that the commission has failed miserably in this endeavor.

The tribes have been allowed to cherry-pick the provisions of the Hellgate Treaty that are favorable to their expansive view of their claimable water rights, while ignoring the clear language in other parts. The tribes' ancestors unquestionably sold all rights, title and interest in their ancestral lands for good and sufficient consideration, period. They kept some right to fish off-reservation "in common" with the rest of us. We all have experienced seller's remorse from time to time, but it is unfair and unwise to allow them a "do- over." To do so tramples the rights of the rest of the citizens of Montana.

The Legislature in MCA 85-2-101(6) stated that it was its intent "that the state, to the fullest extent possible, retain and exercise its authority to regulate water use and provide forums for the protection of water rights, including federal non-Indian and Indian water rights, and resolve issues concerning its authority over water rights and permits." The commission negotiated away, in favor of the tribes, this authority by creation of a unitary management scheme within the compact. Again, they failed miserably, and violated legislative intent clearly expressed in the enabling legislation.

Finally, any negotiation should result in a final quantification of the reserved water rights, not the incomprehensible inflated abstracts currently contained in the compact. The only way the public can reasonably assess the future effect on ourselves and our posterity is with the finality of reasonably quantified abstracts.

There are many other flaws that have been pointed out by others, including Verdell Jackson, Bob Storer, and Commissioner Phil Mitchell to name a few, and I thank them for their diligence. This train wreck is now on its way to the Legislature for approval. I call upon all legislators to reject it outright. To do otherwise would be a violation of their oath of office to uphold the Constitution and laws of the state of Montana for which the voters will hold them accountable.

This has been going on for more than a decade, and it is time to move on. If that involves litigation, then so be it. We citizens should not fear litigation, but embrace it as preferable to submitting ourselves to the whims of the overreaching bureaucrats, as they trample on our rights in pursuit of their vision of the "greater good." At least there is due process and an opportunity to be heard, which has been lacking so far.

The compact process and result is so flawed, and the issues so wide ranging, that I do not believe it can be salvaged by negotiation, and must ultimately be ruled upon by the Supreme Court.

*Saurey is a Whitefish/North Fork landowner and provisional water rights holder.*

# Hell Gate Treaty Forbids Off -Reservation Water Rights Contained in CSKT Water Compact

The claim of the Confederated Salish Kootenai Tribes (CSKT) for off reservation water rights on rivers in the CSKT Compact is based on the 1855 Hell Gate Treaty, Article III: "The exclusive right of taking fish in all the streams running through or bordering said reservation is further secured to said Indians; as also the right of taking fish at all usual and accustomed places, in common with citizens of the Territory, and of erecting temporary buildings for curing; together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."

Note that the statement "right to take fish in common with the citizens of the Territory" is **not a water right;** otherwise Montana citizens could get a water right to protect their favorite place to fish. The Indian right is in common with the citizens of the Territory. These subsistence rights which show up in some treaties are given only to tribes known to be peaceful. A subsistence life style was common among both Indians and the citizens of the territory 159 years ago, but now government programs and fast food restaurants take the place of self sufficiency. Article III also gives Indians the right in common with citizens of the United States to travel upon all public highways and provides the right of public convenience roads being built on the reservation. Article III is a doctrine of public use of land on and off the reservation and **cannot** be legitimately stretched to include a stream flow water rights for the CSKT. The Hell Gate Treaty is very specific and easy to understand and does not mention water or water right.

Article I of the treaty also makes it very clear that the CSKT **cannot** be granted off Reservation water rights based on the right to hunt and fish on their aboriginal land: the CSKT "hereby cede, relinquish, and convey to the United States all their right, title, and interest in and to the country occupied or claimed by them…" Note that the words cede, relinquish and convey and the words right, title, and interest were all used to make sure everyone understood that aboriginal rights were given up.

Article II established the Reservation: "reserved from the lands above ceded, for the use and occupation of the said confederated tribes…"

Article IV through VII pays CSKT for the cession: "In consideration of the above cession, the United States agree to pay to the Confederated tribes of Indians, in addition to the goods and provisions distributed to them at the time of signing this treaty…" Cash payments were required and basic infrastructure such as a school, black-smith shop, saw mill, and a flouring mill were to be built and maintained for a period of 20 years, about $21 million cash. The Federal Government paid CSKT for ceding their aboriginal land!

Article VIII states: "The confederated tribes of Indians acknowledge their dependence upon the Government of the United States, and promise to be friendly with all citizens thereof, and pledge themselves to commit no depredations upon the property of such citizens." Off Reservation CSKT stream water rights are a blatant violation of article VIII. Irrigated land that is subject to a water call by the CSKT (ordered to stop using water) is greatly depreciated in value because of the uncertainty. Irrigators are few in number, but they are the people who grow our food and make up the major part of our economy in western Montana.

Off-reservation stream water rights by CSKT are forbidden by the Hell Gate treaty and **do not** meet the definition of a federal reserved water right which by law is restricted to reservation land. No off reservation water rights on stream flows have been previously awarded in a compact or in case law in Montana or any other state. In addition, the minimum flows **are not based** on a "survival of fish standard" and the water rights have a time immemorial priority date which is senior to everyone including the State of Montana. How could anyone who has taken an oath to uphold the US and Montana Constitutions support giving a political tribal council of a sovereign nation authority over rivers that affect 330,000 people in 11 counties in Western Montana?

Senator Verdell Jackson, Kalispell

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August 11, 2014

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$3.95

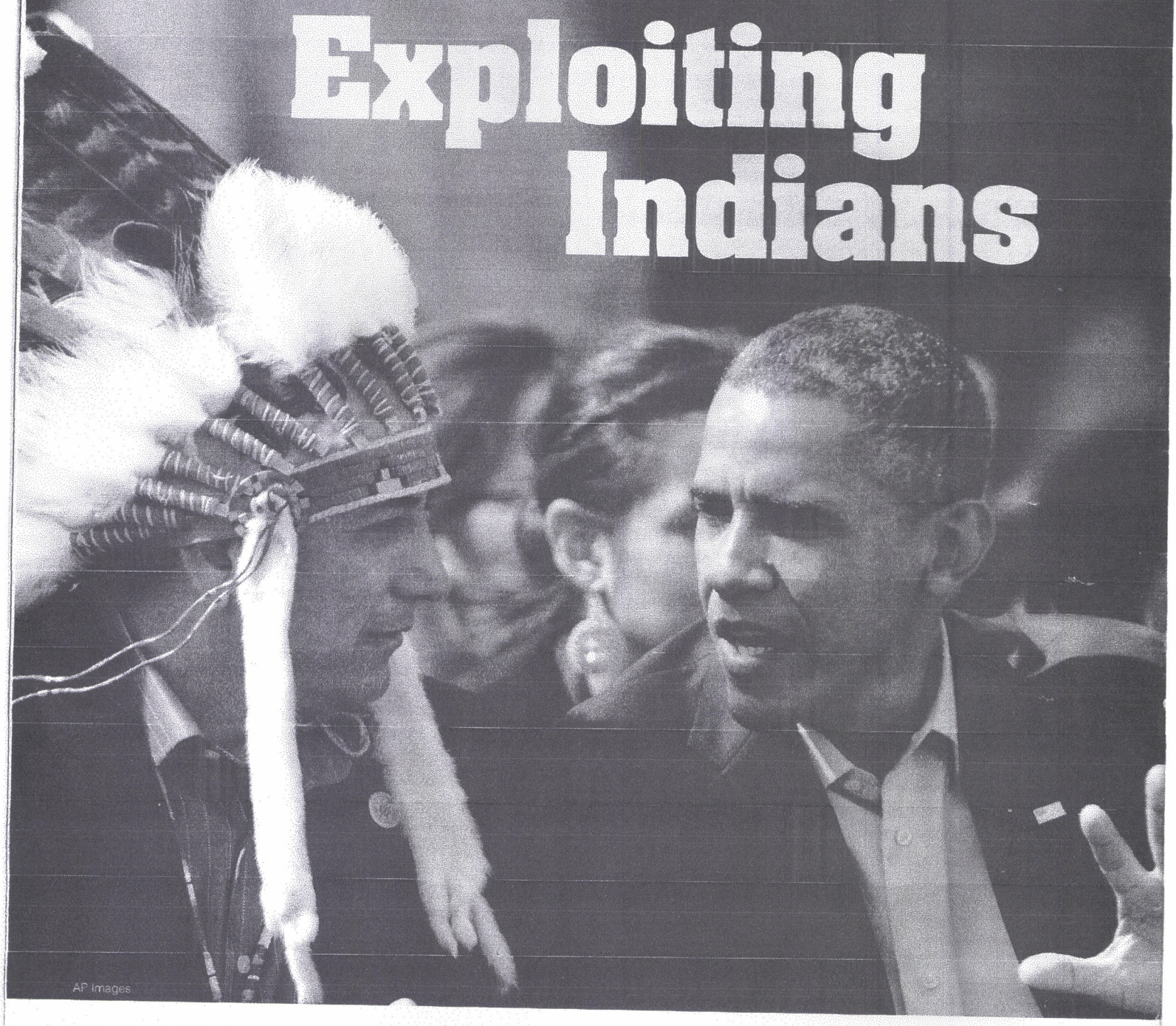
# Exploiting Indians

EXHIBIT NO. 20
DATE 2·16·15
BILL NO. SB 262

Tribal and federal governments work together to seize land and power from U.S. citizens

Ms. Carolyn A. Pierson
58 Elk Run Ln
Trout Creek, MT 59874

# Exploiting Indians



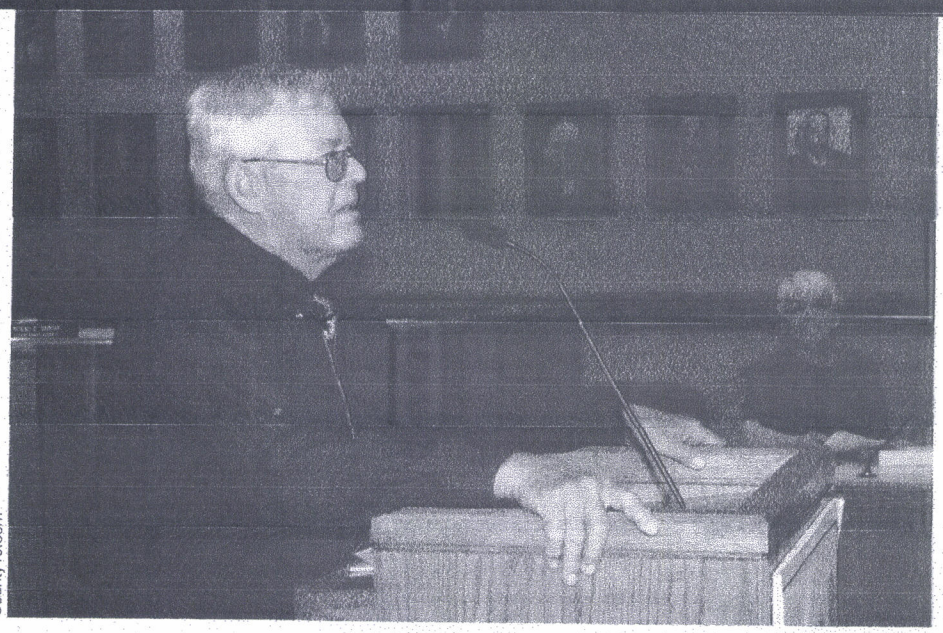
AP Images

Tribal and federal government entities are working to seize land and power from U.S. citizens, ironically hurting most Indians on reservations, as well as other, ordinary folk.

*by Alex Newman*

Many of Doug Thompson's constituents are nervous. Some are angry. More still are confused. The soft-spoken Wyoming cattle rancher has been ranching in vast Fremont County since 1970, and has been on the County Commission for 14 years, serving as the chair for a decade now. Despite the brutal winters, it is a quiet and beautiful area, where hard-working descendants of pioneers, alongside Native Americans, have eked out a meager living from the land for over a century, mostly in agriculture, tourism, and energy. Slightly more than 40,000 people live there, spread out across a county that is about the size of Vermont.

Thompson's ranch, located some 45 miles from the local Indian reservation, is not in jeopardy right now. But the same cannot be said, at least not with any degree of certainty, for the rights of thousands of other citizens in the area, whose businesses,



County10.com

**Fremont County Commission Chair Doug Thompson,** a rancher, speaks during a Citizens Equal Rights Alliance (CERA) meeting about the EPA ruling that put three Wyoming towns inside an Indian reservation.

lands, self-government, access to water, and potentially even livelihoods may be under threat — at least if the Obama administration and its increasingly lawless Environmental Protection Agency get their way.

In December, defying established federal law and multiple U.S. court rulings, unelected bureaucrats at the EPA made Fremont County perhaps the most high-profile battleground in a quiet but disturbing assault taking place across much of the nation. Working with other departments, the EPA unilaterally purported to place the city of Riverton, Wyoming, inside the nearby Indian reservation's boundaries — and more importantly, under the jurisdiction of tribal authorities for the Wind River Indian tribes. At least two smaller towns, Kinnear and Pavillion, were also decreed by the EPA to be within tribal borders.

Riverton is the largest town in Fremont County, home to more than one-fourth of the population and serving as the economic hub for the region. In 1905, Native Americans were paid and Congress passed a law opening up parts of the area to settlers, decreasing the size of the vast Indian reservation. By most accounts, relations between Native Americans and other county residents had generally been peaceful and friendly. As the federal government and the tribal governments it funds team up against non-tribal members, though, tensions are reportedly rising.

The boundary dispute that recently made headlines across America with the EPA ruling has been simmering quietly under the surface for years. Wyoming officials and experts say Congress settled the question more than a century ago — along with the courts in subsequent rulings. But the Obama administration, apparently not agreeing with the law or the courts, handed over more than a million additional acres and three non-Indian towns to the tribes with a simple decree.

"My contention is that this is a congressional call," says Thompson, the rancher and County Commission chair. "It seems like under this current administration, they are trying to do all these things administratively, which is totally inappropriate. It's not up to a political regime to do this. It's a basic philosophical problem. The EPA should not be re-defining boundaries or subjecting citizens to a government that they have no formal say in — voting, access, and so on."

In an interview with The New American, Thompson explained that there has been a longtime effort by the tribal governments to reestablish the old boundaries of the reservation. Using litigation, for example, the federally funded tribal authorities — flush with federally granted casino-monopoly cash and U.S. taxpayer funds — have tried to establish jurisdiction over the land and its non-Indian inhabitants, too. Those efforts failed. However, following the lead of other Native American governments across the country, tribal leaders in Fremont County tried a new tactic.

According to an analysis of government documents, the EPA decision stemmed from a 2008 request by the Wind River Indian tribes to obtain "treatment as a state" (TAS) or "treatment similar to a state" (TSTS) under federal environmental regulatory schemes. In this case, it was done via an amendment to the Clean Air Act, which purports to impose EPA mandates on state governments. Once approved, the EPA ruling TAS allows tribal authorities to be "treated as a state" for regulatory purposes. That means tribal authorities can receive even more federal taxpayer dollars under the guise of implementing and enforcing various EPA regulations, which normally would be handled by the state government.

If the federal government and the tribal governments it funds succeed in Fremont County, everything from water rights and air quality to land use — in some cases even 50 miles beyond whatever the reservation boundary is determined to be — could be regulated by tribal authorities, over whom non-tribal members have no vote. For now, state and local officials have been instructed by the governor to continue operating as usual while the state government prepares to battle the Obama administration in court.

Among other major problems, the EPA ruling, made in consultation with the Obama administration's Department of Interior and the Justice Department, might even make the city of Riverton ineligible for many state and local services, including law enforcement and emergency re-

Working with other departments, the EPA unilaterally purported to place the city of Riverton, Wyoming, inside the nearby Indian reservation's boundaries — and more importantly, under the jurisdiction of tribal authorities for the Wind River Indian tribes.

Among other major problems, the EPA ruling, made in consultation with the Obama administration's Department of Interior and the Justice Department, might even make the city of Riverton ineligible for many state and local services, including law enforcement and emergency response.

sponse. It also raises numerous concerns over taxation, regulation, permitting, and a wide range of other issues involving jurisdiction, officials and experts say. Even tribe members convicted of crimes in state courts may be able to challenge the state's jurisdiction because they can claim the crimes they committed were perpetrated on the Indian reservation under tribal jurisdiction; in fact, it's already happening.

Under the arrangement prior to the EPA's ruling, the Indian reservation was under tribal jurisdiction, along with any lands held in federal trust for the tribes outside the formal reservation boundaries. The federal Bureau of Indian Affairs and other agencies handle much of the governance, despite claims of tribal "sovereignty" parroted by the feds and the tribes. Non-members of the tribes, meanwhile, were subject to state and local authorities such as the sheriff and state regulators.

"What this would do is put Riverton, the irrigation districts, and the main non-tribal areas — those are state, county, and municipal jurisdictions — under the tribes' governments. They could assert significant jurisdiction, up to and including taxation and regulation," Thompson said. "That doesn't mean if the EPA decision stands, that would happen, but in other states that has happened. The tribes say, 'We're not gonna do that right now.' Well, maybe they aren't going to now, but all they have to do is go to court and say this is their jurisdiction."

When the EPA decision was first announced, Thompson explained, many county residents were confused and frightened. "The first question that came out was, 'What is the security of the deeds to our property?'" he said. "The answer is that, if you own the property, you still own it. The difference will be in how you can use your property." And that difference, of course, is crucial, since property could be useless if it cannot be freely used.

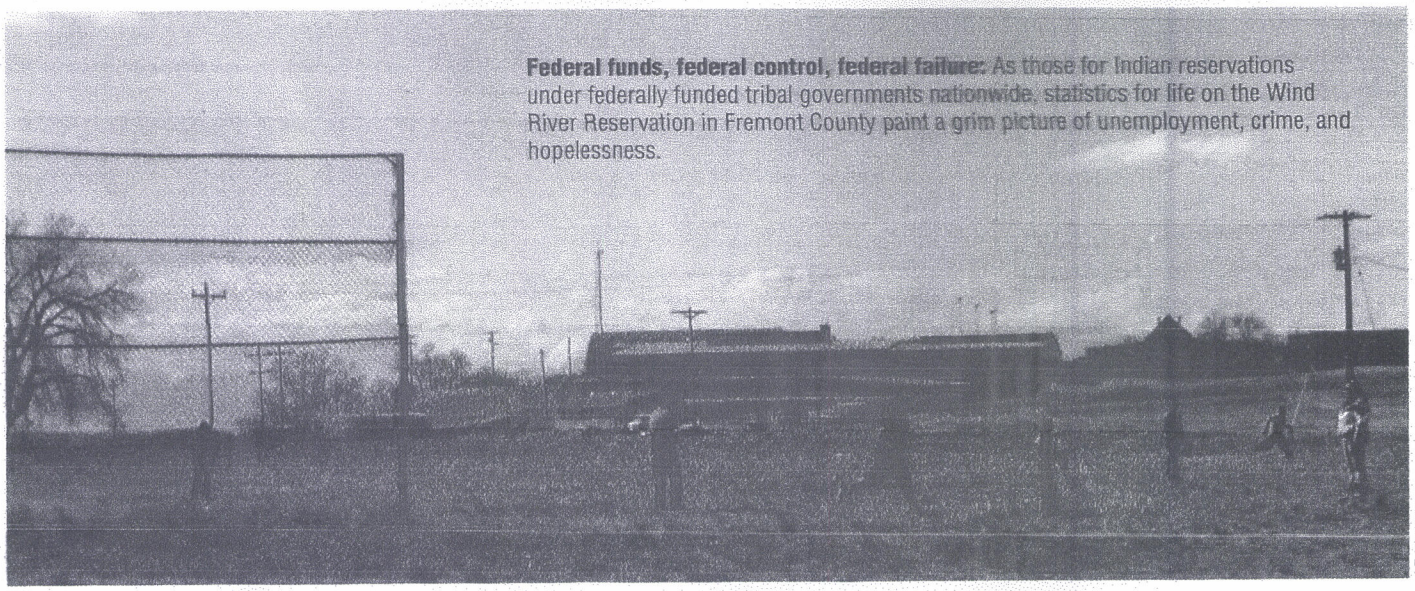
"If you bring another governmental jurisdiction into the mix — say there were permitting regulations exerted — then you'd have to get a tribal permit as well," the commission chair explained. "Now that hits on the foundational problem in this whole deal: You are subjecting non-tribal members to a governmental entity that they have absolutely no say in, because they are not tribal members. You're totally subject to a tribal government authority that you have no say in. You can't vote for the leaders. If they don't want to meet you, they just shut down the meeting. That's the crux of this whole thing."

"The non-tribe members are greatly concerned," Thompson said of county residents. "Citizens are nervous about what this means — they're hearing a lot of mixed messages. They hear from tribal members 'we're gonna take your land back, we're gonna regulate you out of business,' so they're justifiably concerned." Even the mayor of Riverton says he has received similar threats.

## State-level Resistance

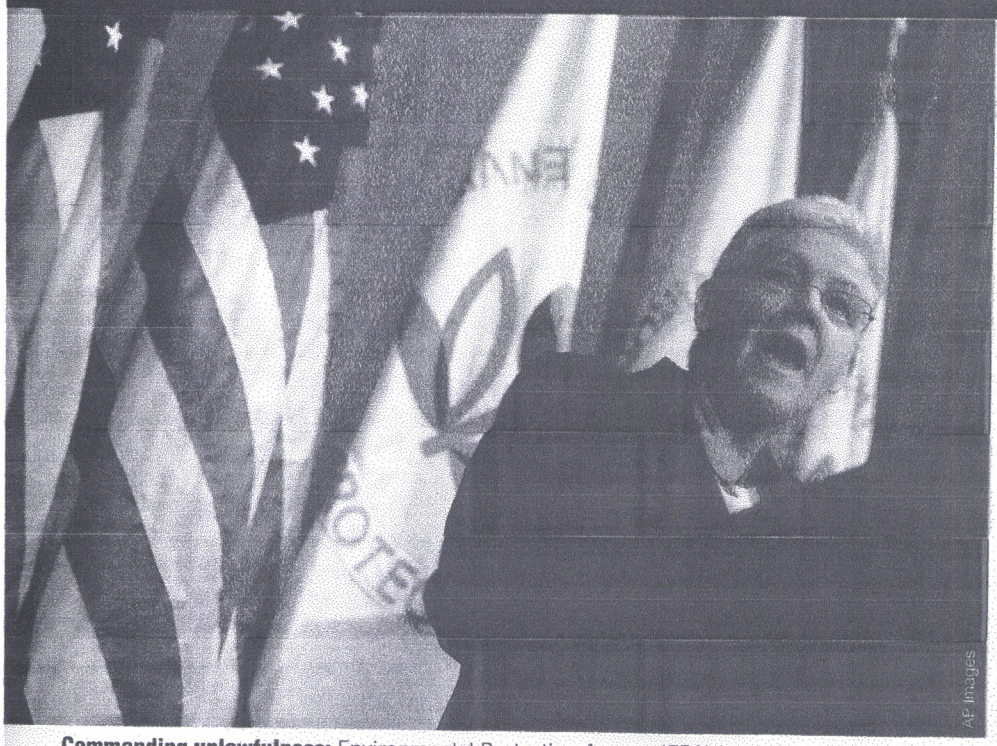
In Wyoming, the deeply controversial executive-branch machinations that purported to place Riverton, Kinnear, and Pavillion inside tribal boundaries have sparked a massive outcry among residents and state officials, with Wyoming Governor Matt Mead and his administration vowing to fight back.

"My deep concern is about an administrative agency of the federal government altering a state's boundary and going against over 100 years of history and law," the governor added in a statement. "This should be a concern to all citizens because, if the EPA can unilaterally take land away from a state, where will it stop?" The governor also thanked the Wyoming attorney



**Federal funds, federal control, federal failure:** As those for Indian reservations under federally funded tribal governments nationwide, statistics for life on the Wind River Reservation in Fremont County paint a grim picture of unemployment, crime, and hopelessness.

AP Images




**Commanding unlawfulness:** Environmental Protection Agency (EPA) boss Gina McCarthy has presided over the radical and fast-accelerating weaponization of the agency in its war on liberty and the U.S. Constitution.

general and his staff for urgently preparing a thorough review of the historical record on the issue. "This analysis shows how flawed the EPA was in its legal justification for its decision," Mead said, adding that all avenues would be pursued. "The federal government clearly had a predetermined outcome it sought to uphold."

In a petition to EPA bosses asking the agency to reconsider and stay its decision, Wyoming Attorney General Peter Michael said the Obama administration's scheme depends on "a host of faulty factual and legal conclusions." The document cites a broad range of statutes, treaties, and court decisions, arguing that the EPA essentially cherry-picked arguments in a manner "more akin to advocacy" to reach a determination that is simply "wrong." The attorney general said that the decision would strip the state of its sovereign right to exercise jurisdiction over lands "rightly within its control" and that it must be overturned — or at least delayed until the courts can review it. "A failure to do so will likely lead to civil and criminal jurisdictional turmoil, irreparably harming the public interest," he warned, echoing widespread concerns.

Wyoming's entire delegation to the U.S. Congress has also expressed deep concerns, with Senator John Barrasso blasting the Obama administration for again thinking it "can ignore the law of the land when it suits their agenda."

## EPA and the Tribes

The federal government has been suspiciously quiet since dropping the bombshell on Wyoming in December. The agency did eventually stay its decision as the legal battle in the U.S. 10th Circuit Court of Appeals proceeds. Some analysts expect that litigation to eventually end up before the Supreme Court.

Tribal leaders, on the other hand, have responded to the growing uproar across the state — and even the nation — in a variety of ways, particularly by trying to downplay fears and attack critics. As has become typical, tribal officials were quick to suggest that opposition to the EPA decision and the tribal governments' actions may be based on "racism." Ironically, even the mere suggestion that everyone should be treated equally under the law regardless of race is often met with howls of "racism" from powerful tribal leaders rolling in federal taxpayer dollars and revenue generated from casino monopolies (granted to tribal governments by the 1988 Indian Gaming Regulatory Act).

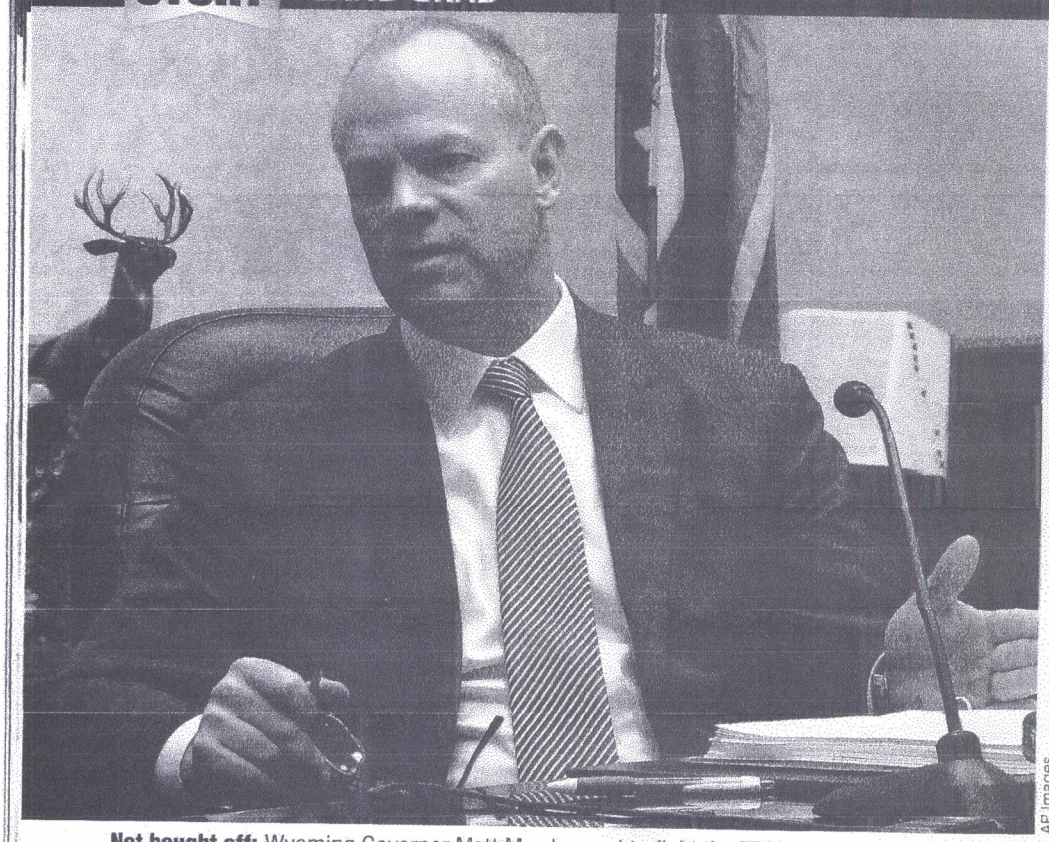
In Fremont County, tribal leaders have also claimed that they mostly just want "clean air," though they have also become increasingly bold in discussing the "potential" for further jurisdictional issues that should be "negotiated" rather than litigated. Tribal government leaders at the reservation were not available for comment and did not return phone calls to THE NEW AMERICAN by press time.

When the Citizens Equal Rights Alliance (CERA), which supports constitutional government, held a convention in Riverton about the ongoing issues, tribal leaders furiously lashed out, even comparing the non-profit group to the Ku Klux Klan. The establishment media in Wyoming disgracefully allowed its pages to promote the smear. However, group leaders and local citizens told THE NEW AMERICAN that the attacks were so far detached from reality that it was hard to believe the claims were even made — much less printed. CERA's previous chair, for example, was a Cherokee Indian, and the group has represented Native American tribes whose water rights or other protections were under government assault. More than 50 elected officials attended CERA's gathering despite the libelous accusations.

## The Tip of a Dangerous Iceberg

The Riverton case blew the lid off a phenomenon that has been proceeding quietly across the United States for decades. It turns out that, despite the lack of press coverage, the EPA's efforts to hand jurisdiction over multiple towns to Indian tribes were merely the proverbial tip of a gargantuan iceberg. Indeed, from coast to coast, multiple federal agencies have been working with tribal governments in a concerted attack on the U.S. Constitution, property rights, self-government, water rights, and more. Perhaps the biggest difference in the Wyoming case is that state officials — who across America are having their campaign coffers stuffed with Indian casino cash — actually spoke out, and the press reported on it.

However, it is not the first time that the phenomenon attracted at least some degree of public scrutiny. In fact, the scandalous federal exploitation of supposed Native American "interests" to justify power grabs surfaced very briefly over a decade ago, when EPA bureaucrats were convicted of fraud in mid-2000 in a case



AP Images

**Not bought off:** Wyoming Governor Matt Mead vowed to fight the EPA's defiance of federal law and court rulings in its decision to massively expand the Wind River Indian Reservation. Most politicians quietly ignore the land-grab controversies in their states.

purporting to grant "Treatment as a State" status to three tribal governments in Wisconsin. In that instance, two EPA officials were busted for falsifying documents in a bizarre attempt to justify allowing the tribes to regulate water in and around their reservations, which would have had nightmarish implications for the overwhelming non-Indian majority in the area.

"Aside from the poor judgment displayed by some of the key participants in this case, another factor influencing developments in Region V is EPA's relationship with the tribes," explained Dr. Bonner Cohen, now a senior fellow with the National Center for Public Policy Research, after the EPA fraud and power grabs were exposed and prosecuted. "That relationship is characterized by an odd mixture of intimacy and mutual exploitation that has come back to haunt both parties."

That case, though, was hardly unique. Elaine Willman, who is of Cherokee Indian ancestry, is among a handful of respected experts who can speak credibly on a subject that is deliberately shrouded in obscurity and deception — federal Indian policy. Her husband is also of Native American ancestry and is even related to Sacajawea, the celebrated Indian who served on the Lewis and Clark expedition.

Willman served as the chair of the Citizens Equal Rights Alliance from 2001 to 2007 until accepting the position of director of community development and tribal affairs with the small Village of Hobart in Wisconsin. She still serves on CERA's board and is working on a doctoral degree in federal Indian policy, one of her passions and an issue she says requires much more attention and some major reforms.

After traveling across the country to visit Indian reservations and conduct interviews, Willman's worst suspicions were confirmed. The proliferation and empowerment of federally funded tribal governments, working with the federal government itself, threatens the constitutionally protected rights of all Americans, including, ironically, the descendants of the original Native Americans. It threatens self-government, too, she says.

In 2005, Willman published a book on the subject entitled *Going to Pieces: The Dismantling of the United States of America.* It is packed with examples of abuses stemming from tribal governments in cahoots with state and federal policymakers. America is increasingly being governed by tribalism, she says, a system whereby federally funded tribal governments work with their federal paymasters to attack state sovereignty, private property, the unalienable rights of non-tribe members and Indians, and much more.

Early on in the book, which recounts her 6,000-mile voyage from her native Washington State to New York, she describes massive land grabs in rural Northern Idaho being facilitated by the EPA, the Department of the Interior, and other state and federal agencies. Among other concerns, she explains that tribal governments, with the connivance of state and federal officials getting big campaign contributions from tribal governments, are unilaterally expanding the borders of Indian reservations far beyond what U.S. law permitted. Tribal governments are working to exercise jurisdiction over property owners whose families have owned the land for a century, sometimes even longer. The Coeur d'Alene tribe, for example, with help from federal officials, is among the tribal governments trying to push out the boundaries of the areas they control, with everyday citizens and their lawfully owned properties in the crosshairs.

Among those who have been forced to deal with the problems are Roger Hardy and his wife, Toni, whose grandparents lawfully homesteaded their more than 500 acres of lakeshore land more than a century ago. With help from the EPA, and despite huge legal costs for the Hardys trying

Tribe members convicted of crimes in state courts may be able to challenge the state's jurisdiction because they can claim the crimes they committed were perpetrated on the Indian reservation under tribal jurisdiction; in fact, it's already happening.

to fight it, the Coeur d'Alene tribal government was able to acquire control over a public "walking trail" through the property after a contaminated railroad track fell out of use. Tribe members reportedly regularly enter their private property, sometimes damaging it, sometimes shooting guns at anything that moves under the guise of "ancient hunting rights," and more. The tribe's actual reservation has been about 70,000 acres since the late 1800s. Tribal authorities, though, with connivance of federal and state officials, have been working hard to expand its boundaries to the former 350,000 acres. That puts Roger and Toni's property — along with many others' — at serious risk.

Aggressive actions by another tribal government in Idaho, the Nez Perce tribe, with several thousand enrolled members, prompted local authorities from across the region to band together in an effort to contain the tribal government's claims of purported jurisdiction. There, tribal officials were trying to extort gargantuan amounts of money for "permits" from non-Native residents for simple actions such as building a school — on non-reservation land — all while trying to usurp water rights and more.

County and local governments there were providing virtually all taxpayer-funded services to everyone in the central Idaho area, including tribe members. Still, the tribal government was receiving more in federal grants alone than the local and district governments were collecting in total revenues, combined. The tribal government was also bringing in big bucks from an Indian casino and tax-exempt businesses, which have a major advantage over non-Indian businesses due to the taxation arrangements. The tribal government, like others across America, was pouring that money into buying up more land, hiring lobbyists, funding politicians, and employing swarms of attorneys to push its goals through litigation in the courts.

Some of the most alarming tales of joint tribal-federal abuse came from Thurston County, Nebraska, home to the Omaha and Winnebago reservations and numerous non-Indian farmers whose ancestors acquired the land lawfully, often by purchasing it from Indians. Over a decade ago, large swaths of the area, part of EPA "Region 7," were placed under the regulatory jurisdiction of tribal governments on everything from pesticides to environmental regulations. Non-Indian farmers were suddenly faced with a nightmarish situation of being governed by federal and Indian authorities with whom they held no sway.

Incredibly, tribal law enforcement — mostly from the U.S. Bureau of Indian Affairs — even began harassing and brutalizing some local farmers. In her book, Willman tells the story of the Knecht family, which has farmed the land for four generations. In 2004, Kim Knecht, the son, was on a tractor in his family's fields when he spotted three Bureau of Indian Affairs (BIA) tribal police cars speeding toward him. Apparently the Omaha tribal government had decided that part of the Knechts' lawfully owned farm was actually its property. One of the cars rammed Kim's tractor before a gaggle of tribal cops jumped out and dragged him off his vehicle, scraping his back in the process. The officers maced him, slammed him on the ground, and put him in handcuffs. Kim's frantic wife called 911 before running toward her husband in a panic. She was arrested, too. Kim's father, Vernon, also ran out and demanded that the tribal officers get off his private property. After claiming that the land was on the "reservation," they eventually did leave, taking Kim with them to a tribal jail and charging him with assaulting tribal law enforcement, ramming their vehicles, and "resisting arrest." Finally, after thousands of dollars squandered on legal fees, Kim was cleared of all the bogus charges, and a federal judge severely reprimanded the tribal cops. However, no charges were ever brought against the tribal officers for trespassing, assault, harassment, destruction of property, or any other crimes.

Incredibly, just weeks passed before Vernon suffered a similarly traumatic incident at the hands of the tribal cops. After reluctantly (considering what happened to his son) helping his Indian friend feed the tribe's buffalo, Vernon left his tractor on the reservation at the request of his friend, a member of the tribe. Tribal BIA police then went to tow it away. When Vernon found out, the 73-year-old went to investigate, and sure enough, the officers were hauling his machine away. He got out and explained the situation to the officers. They responded by immediately beating him on the head with clubs, throwing him to the ground, rubbing his face in the gravel, and handcuffing him. Pleading with the officers for his heart medication and covered in bruises, Vernon was eventually taken from the scene to the hospital by paramedics. It took months for his face to heal. Kim, who stayed in the truck at his dad's request, took pictures of the beating, but considering his own legal problems with the tribal government, he could not do much. Vernon was eventually charged with "stealing hay" and "trespassing" on Indian land, though those trumped up charges were eventually dropped as well. "American citizens

AP Images

**Land transfer:** Senator John Barrasso (R-Wy.) and the entire Wyoming congressional delegation have blasted the controversial EPA ruling purporting to put three non-Indian towns in Fremont County and land equal in size to a small state under tribal government jurisdiction.

Two EPA officials were busted for falsifying documents in a bizarre attempt to justify allowing the tribes to regulate water in and around their reservations, which would have had nightmarish implications for the overwhelming non-Indian majority in the area.

... don't have any rights here anymore," then-County Sheriff Charles Obermeyer is quoted as saying in Willman's book.

Even more worrying at the time, Willman explains, were plans to cross-deputize tribal enforcers, giving them power to enforce state law in addition to tribal law, even against non-Indians.

In Washington State, meanwhile, Willman also found similarly troubling trends. To illustrate the lunacy of the EPA "Treatment as States" policies for Indian tribes under the Clean Air Act, for example, she used two maps. The first shows the state government's air-quality regions under EPA mandates. The second features the areas where "Indian air" would be controlled by tribal governments — essentially the entire state, once the "weighted comment" scheme giving them powers over 50 miles outside reservations is taken into account.

"Regulatory control of America's air and water directly impacts America's industries, private sector market places, farming, energy and natural resources," Willman explains. "TSTS [Treatment Similar to a State] is the stealth bomb that has been launched and is heading for the target. Highly urbanized areas such as Portland, Seattle, and the entire West Coast could soon become beholden to multiple approvals required by Indian tribes in order to open a business or conduct any activity within their jurisdictions." Across America, wherever there are self-styled "sovereign" tribal governments, the threat is there, too.

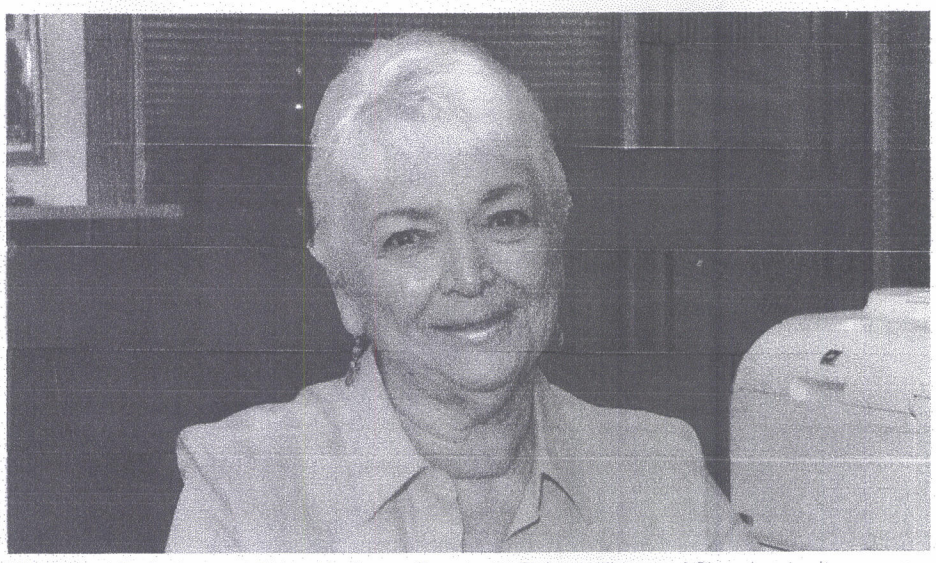
The Department of Interior has also been plotting to hand over massive swaths of public lands to tribal government managers. Public spaces deemed to have "special geographic, historical, or cultural significance to self-governance tribes," for example, could eventually be run by tribal authorities. Even "close proximity" could be enough to let tribal governments take over governance of dozens of national parks and "wildlife refuges" across America. Willman suggests access to the areas is being "systematically" restricted — potentially even to the point of denying access — to everyone except the Native American Indian population. In recent years, as just one example, tribal governments in South Dakota, with full federal connivance, have been seeking control over huge swaths of the Badlands National Park. Analysts also said that plot could set a "precedent" for other tribes across America to seize control over national parks. However, at least in this case, tribal and non-Indian residents in the area are resisting the giant land grab being cooked up by the tribal governments and the federal one.

In Montana, among the stops on the journey, Willman and her colleague, Kamie Christensen Biehl, found a wide range of problems brought about by joint federal-Indian government abuses. Since the book was written, the situation has only grown worse. As just one example, as this article is being written, non-tribal members across 11 western Montana counties are being threatened with potential ruin through the loss of water rights to the Confederated Salish and Kootenai Tribes (CSKT). Especially under threat are the more than 20,000 non-Native Americans who lawfully own land and property in the Flathead Indian reservation, home to about 4,000 Indians who are openly seeking to reclaim all of the land that was sold off beginning in the early 1900s.

On July 8, a busload of non-Native locals from the region, along with a caravan of cars full of ranchers, descended on Helena to testify against the plot to hand over control over water to the tribal government and its federal "partners" as part of a new, perpetual "compact." If approved, the tribal government would be effectively in full control over the property and destinies of tens of thousands of non-Native citizens by controlling their access to water — perhaps the single most essential resource.

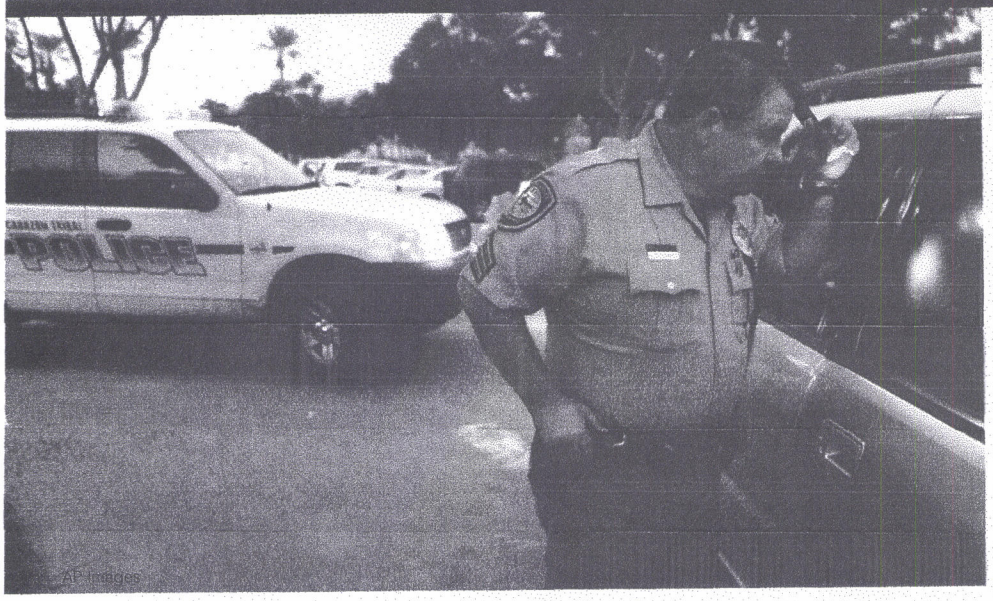
Clarice Ryan, an activist with Concerned Citizens of Montana working to fend off the attack on water rights, told THE NEW AMERICAN that the land grabs are "happening nationwide, with the federal government using the reservations to gain control of land, water, air, and energy. I truly believe that what is happening right here on our Salish Kootenai Reservation could become the pilot program and poster child laying the groundwork for the policies and political strategies nationwide."

The above examples represent but a tiny fraction of the abuses perpetrated



hobart-wi.org

**She's seen it:** Author and federal Indian policy expert Elaine Willman, of Cherokee heritage, says the expansion of tribalism (socialism) threatens the U.S. Constitution.



AP Images

**Federally funded tribal governments,** which the feds and the tribes falsely claim are "sovereign," run law-enforcement programs that often have very negative consequences for Indians and non-Natives alike.

against citizens of all races by the federal government and its dependent so-called sovereign tribal governments. While a few court rulings have sought to rein in some of the wildest abuses — EPA just got unanimously smacked down in the liberal D.C. Court of Appeals for trying to override the government of Oklahoma in Indian country and essentially regulate dust — the lawlessness is still growing.

## How Did This Happen?

The hundreds of tribal governments and the federal government have developed a sort of symbiotic relationship benefiting both — at the expense of the rights of Americans and Indians alike. Of course, it is important to draw a distinction between tribal governments and Native Americans. Estimates suggest just one in five Indians is actually registered as part of a tribal government or lives on a reservation. While all Indians are and have been U.S. citizens for generations, only a handful actually willingly subject themselves to the rule of federally funded tribal governments.

There are more than 550 officially recognized tribal "nations" spread across about 30 states. Most of them have a Department of Interior-approved "constitution" under the Indian Reorganization Act of 1934, which establishes the tribe's governing system. Once recognized and approved, the tribal governments then become quasi-dependent "sovereigns," with huge amounts of federal tax dollars and supposed "sovereignty" delegated to them by the federal government. "It's all a horrible hoax," Willman told THE NEW AMERICAN in one of a series of extended interviews exploring federal Indian policy.

Of course, the reservation system has, by any objective measure, been a miserable failure. As THE NEW AMERICAN has documented in the past, statistics for life in Indian country paint a grim tale of alcoholism, violence, drug abuse, broken families, dependence, poverty, abuse, suicide, lack of education, and a general feeling of hopelessness. Many tribal leaders benefit from the system, of course, but for members, generally speaking at least, misery reigns across most of Indian country.

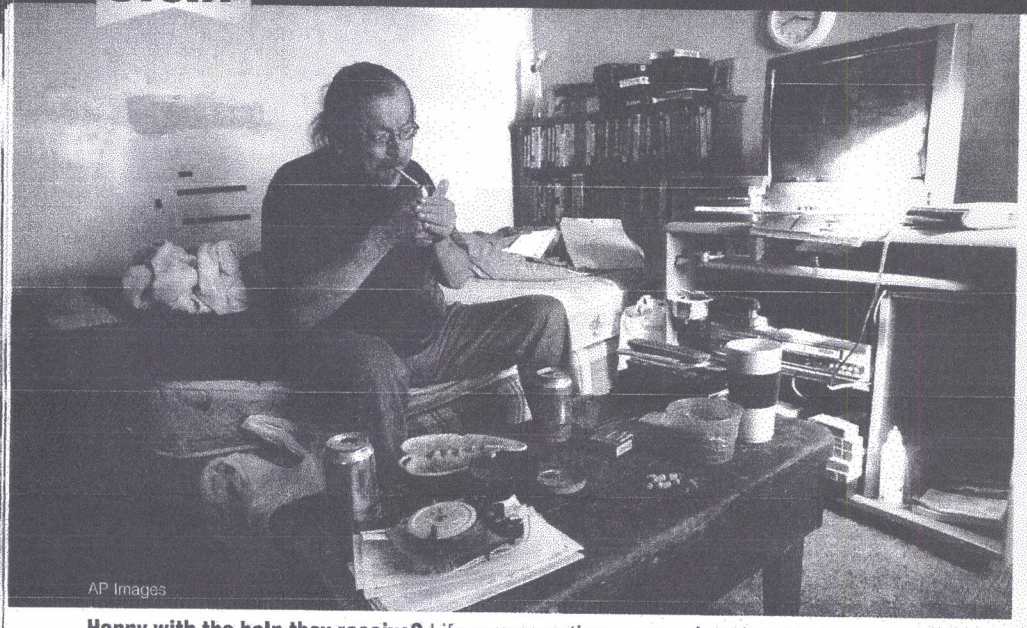
"This establishment thrives because of the perverted interpretation of sovereignty. The Indian establishment — I'm talking about tribal government and the Bureau of Indian Affairs — wield a lot of power in Washington," Faron Iron, a member of the Crow tribe who has served on the tribe's executive committee but disagreed with the tribal government's policies, is quoted as saying in Willman's book. "They purport to be Indian experts and they speak for the common Indian, but it isn't so. They protect the system itself, which benefits them. As far as people, they merely serve as statistics to qualify for funds or whatever else they need. The people are basically to be used, is what it is."

But how did the accelerating joint tribal-federal assaults on liberty, property, and self-government come about? Willman says one of the key tools is the exploitation of guilt. As documented in innumerable history books, the descendants of Europeans who arrived in America over hundreds of years were often brutal toward Native Americans, as was the federal government. While few living Americans today participated in historical atrocities against Indians, a feeling of collective guilt still pervades the culture. This is a crucial weapon in allowing the federal government and its Indian government "partners" to run roughshod over the rights of Americans with little protest or media coverage. "They have abused white guilt," Willman explains.

Another key tool is the deluge of cash facilitated by the feds. "You can time the explosion and the abuse of Indian policy to the emergence of federal casino monopolies in 1988," Willman explained. "As soon as that act passed, that money truly did start buying up the political process, and that is when the abuse really blew up, you can trace it. Before that, there had been a live-and-let-live atmosphere between communities. That was the tipping point — these gaming tribes started getting mega-wealthy. The money was intended to improve the lives of people on the reservations, but it has not done so. It's just money for the tribal leaders and political contributions. That financial leverage really ties in with the expanded symbiotic relationship."

After visiting nine reservations, Willman summarized the process that occurs: "A tribe gets a casino(s); a tribe buys political and legal power; surrounding counties, towns and citizens are bullied; a tribe buys or economically forces out landowners/businesses; elected officials get quiet, or get purchased; non-tribal lands and economies dwindle quickly; thousands of American citizens lose — sometimes everything; tribalism as a governing system" then eventually replaces self-government.

It is also important to understand how these reservations function economically — much more akin to central planning and socialism than to American notions of free markets. The tribal government largely controls jobs, the economy, the distribution of federal tax dollars, and more. "Centralizing and expanding the power of the federal government in various states over citizens, and spreading


AP Images

**Happy with the help they receive?** Life on reservations across America stands as a testament to the failures of federal Indian policy: Unemployment, violence, suicide, alcoholism, drug abuse, obesity, and hopelessness are off the charts.

socialism — tribal governments — as a governing system is a marvelous way to domestically undermine the principles of our U.S. Constitution," Willman says.

Of course, much of the trend is fueled, as with most ongoing assaults on freedom, by Americans' own tax dollars and the shroud of secrecy that surrounds it all. Willman says, for example, the "total power" of federal Indian policy is based "entirely upon the secrecy and intentional absence of studies done, or audits completed." Consider President Clinton's "executive order" in 2000 establishing an "Indian Office" in every single federal agency. Each of those agencies then created financial programs, many of which distribute taxpayer funds to tribal governments. Before that, most of the federal funding went through the Bureau of Indian Affairs.

Now, nobody even seems to know how much federal largess is flowing to tribal governments. When CERA held a conference a few years ago in Washington, D.C., a keynote speaker was George Skibine, a high-ranking BIA official. When asked by a CERA board member whether BIA had ever audited how much annual funding goes to the more than 550 tribal governments, he reportedly responded: "We've been unable to do that." Apparently there was one attempt to calculate how many federal dollars from all agencies are distributed to the tribes, but it turned out to be impossible.

As far as the constitutional authority underpinning the developments, experts say it is shrouded in mystery as well. "For at least 29 states that host Indian tribes, this is death by a thousand slashes over a long period of time, to intentionally erode state jurisdiction, administrative or regulatory authority within its own boundaries. The Congressional environmental acts of the mid '70s became a marvelous tool," Willman said.

## Obama Steps Up the War

As if the problems were not already dangerous enough, the current administration is stepping up the federal exploitation of Native Americans in its effort to "fundamentally transform" the United States. In June, for example, Obama and his wife visited the Standing Rock Sioux Tribal Nation in North Dakota to tout his accomplishments and his administration's "partnerships" with American Indian tribes. "My administration is determined to partner with tribes," Obama boasted at the summit. "It takes place every day on just about every issue that touches your lives."

Before the gathering, Obama published a June 5 op-ed in *Indian Country Today* boasting of his efforts and promising more to come. "As president, I've worked closely with tribal leaders, and I've benefited greatly from their knowledge and guidance," he said. "That's why I created the White House Council on Native American Affairs — to make sure that kind of partnership is happening across the federal government."

The powerful council was created by an "executive order" last year. The purpose of the order, according to the document itself, was to "promote and sustain prosperous and resilient Native American tribal governments." While UN agreements on indigenous populations were not mentioned, the controversial decree incorporated more than a few elements of global schemes currently being used worldwide that will be addressed further down.

Tribal government leaders were happy about Obama and his efforts, too. "The best thing that's happened to Indian Country has been President Obama being elected," claimed Dave Archambault II, chairman of Standing Rock. Ironically, though, the reservation Obama visited is itself a testament to the utter devastation wrought by federal Indian policy. Despite a federally granted casino monopoly, almost half of the Indians there live in poverty. About 50 percent drop out of high school. An estimated 86 percent of the tribe's members are unemployed. Alcoholism, obesity, sexual violence, crime, and suicide rates are off the charts. On other reservations, the numbers are even grimmer.

The Obama administration even hosts annual summits for tribal government leaders in Washington, D.C., to meet with top White House officials. Obama has also taken steps to increase "tribal sovereignty" at the expense of state officials by, for example, allowing tribal governments to bypass governors and apply directly for federal emergency and economic development "grants."

All across the Obama administration, departments are working with Indian governments on deeply controversial programs that have flown largely under the radar. The Justice Department, for example, recently established a permanent "office of tribal justice." Under an agreement reached amid a lawsuit, the Department of the Interior is now spending billions of dollars buying up land to put in "trust" for various Indian tribes. Obama is also in the process of relaxing the requirements to become a "tribe" and begin receiving federal handouts and vast new regulatory powers to assault property rights, state sovereignty, and the U.S. Constitution.

SENATE JUDICIARY
Exhibit No. 26
Date: 2/16/15
Bill No. SB262

Comments for SB262, CSKT Compact
Montana senate Judiciary Committee Hearing, February 16, 2015
Helena, MT

From: James T. Paugh

I am opposed to SB262

I remember about 50 years ago some of the citizens of Montana thought we should have a better system of managing water use rights. They should be centralized by state government, because some counties did not have a very good system.

I was involved with several agricultural organizations and one, or several of them, thought we should have a meeting and have some knowledgeable people explain the concept. We had a meeting in the courtroom of the Gallatin County Courthouse. As I remember it there were at least 50 or so people there. We had a lawyer and several other local people. The last speaker was Wes D'Ewart. He had been a United States Congressman from the Eastern District and lived on a ranch West of Wilsall. He was retired from a career as a U. S. Forest Ranger and had worked in the Park County area.

Mr. D'Ewart explained some of the advantages of County Courthouse control, the records would be locally available, could be up dated and errors corrected easily. His last statement as I clearly remember it was: "You people should understand that when your water rights get to Helena, they are half way to Washington D.C."

I my opinion, if this Compact is approved, most of Montana's water West of the Continental Divide, will be under the control of a 5 member appointed Board for the Compact, not the members of the tribe, who will be working in Kahoots with the BIA, a part of the United States Government.

It would be fine with me if this Legislature, as a tribute to the memory of Congressman D'Ewart, did not approve of this Compact. Montana would then, still have its Constitutionally owned water.

James T. Paugh

Jim Paugh
Coffee Creek, MT 59424
Phone (406) 566-2255

SENATE JUDICIARY
Exhibit No. 22
Date: 2/16/15
Bill No. Judiciary SB262

Statement in opposition to SB262 before the Senate Judiciary Committee on February 16, 2015

My name is Jeanette Zentgraf. My husband of 60 years and I live in Lolo and though we are not farmers or ranchers, we want Montana ranchers and farmers to continue to be a benefit to Montana's economy.

Our friends who are ranchers and farmers have had their water rights protected by the Montana Constitution, Water Authority Statutes and the MEPA (Montana Environmental Policy Act). The Water Compact is a threat to that protection. Under the Authority of the Water Compact, a board consisting of two people representing the federal government, two people representing the Indian Nation and two people representing the State of Montana will make decisions about water rights that the MT State Water Authority should continue to do with justness and with respect for the U.S. Supreme Court Decision of 1981.

Neither the federal government nor the Indian Nation owe allegiance to Montana citizens, but our MT Constitution does. Article II, sec. 3 should be supported by this Committee.

No Indian Treaty has been violated and not even the CSKT Tribal Constitution of Oct 28, 1935 authorizes governance over non-tribal persons or properties.

We believe that the Water Compact demands too much of you. The Compact demands that you give your consent to a Compact that can never be altered or amended and will stand as you see it before you for Time Immemorial. Without your consent it will die here and it should.

We attended 2 Water Compact public meetings in Missoula and voiced our objections, as did the majority who were in attendance. Our suggestions were ignored, as they did not appear in the supposed altered Compact. The New Development of the Tribal Water Right, the Lease of the Tribal Water Right and the sale of water to out-of-state buyers do not adhere to needed protections of water rights for our farmers and ranchers. If we continue to support our current Water Statutes, you legislators will have the final word before our water is sold to out-of-staters, after studying a report by our State Water Department. Unlike the Indian Nation and the federal government, we thank God, that your loyalty is to Montana citizens and the State of Montana.

Respectfully submitted,
Jeanette Zentgraf

Jeanette Zentgraf
P.O. Box 1116
Lolo, MT 59847
273-3685

SENATE JUDICIARY
Exhibit No. 23
2/14/18
SB 362

SALAZAR FIASCO / KERR DAM SCAM

I am conducting Petitions to address these two issues under Article IX-Referendum, "any enacted or proposed ordinance or resolution of the Council shall be submitted to a popular referendum." Tribal Council has the belief they and they alone are the Supreme Power of Authority and the Membership has NO say-so.

The Membership possesses the Supreme Power of Authority, our Tribal Constitution and Tribal Court affirms this.

1. Article VII - Bill of Rights - Section 2
2. Article IX – Referendum – Section 1
3. Tribal Court – Cause No. 13-423-CV

The People's Voice v. C.S.K.T Tribal Council Order dismissing complaint dated 01-13-14, pg. 5. The right of Referendum pertains to any enacted or proposed ordinance or resolution of the Council "and requires that the issue be submitted to the people."

PETITION 1. Salazar. Based on the actions displayed by Tribal Council and Tribal Legal Dept. who went to great lengths to deny the Membership any say-so in the disbursement of proceeds awarded from Salazar, despite the Membership's outcry for 100% payout.

The Membership possesses the Authority and Power to state unequivocally, "We have say-so." We the Membership vote to rescind Resolutions 12-70, 12-221, 12-228, 13-039.

Return the $150,126,000 awarded to C.S.K.T. from Nez Perce Tribe, et al. v. Salazar, No. 06-02239 (D.D.C.)

It was disclosed at the Ronan/Pablo District meeting held 02-26-14 $40 million of the Salazar proceeds is to be loaned to Energy Keepers, Inc.

PETITION 2: Kerr Dam Recapture Fund. Rescind Resolutions 86-02, 13-99, 13-248.

1. Disburse 100% of all funds for purchase/recapture of Kerr Dam to the Membership – adult and minor – with no withholdings.

100% disclosure to the Membership on issues of such magnitude is the proper protocol – not concealment.

Coercion, Government by Force.

Article IX-Referendum – The Will of the Membership. Vote on it.

The final say-so – it's happening.

Thomas A. Lozeau Jr.
Tribal Member
Ronan, MT

March 6, 2014

I, Thomas A. Lozeau, Jr. Tribal Member, hereby request a current Voter Registration List to conduct an Article IX REFERENDUM – Section 1, Petition to gather/collect signatures of eligible voters of C.S.K.T. to vote to rescind the following Resolutions:

12-70 Adopted March 1, 2012

12-221 Adopted August 30, 2012

12-228 Adopted September 6, 2012

13-039 Adopted November 15, 2012

86-02 Adopted October 4, 1985

13-99 Adopted February, 14, 2013

13-248 Adopted August 29, 2013

And All Resolutions pertaining to the Resolutions listed, that are currently not listed.

1. Petition 1 – Salazar – Rescind Resolutions 12-70, 12-221, 12-228, 13-039
   Return $150,126 million awarded to C.S.K.T./Nez Perce Tribe, et al. v. Salazar, No. 06-02239 (D.D.C.)
2. Petition 2 – Kerr Dam – Rescind Resolutions 86-02, 13-99, 13-248
   Disburse all funds for purchase/recapture KERR DAM
   100% to Membership – Adult and Minor, with **NO WITHHOLDINGS**

(2)

CONFEDERATED SALISH AND KOOTENAI TRIBES

EXPLANATION OF BUDGET FORECAST AND PLAN

October 4, 1985

RATE OF INFLATION

The average rate of inflation for the last thirty years is assumed to be the best predictor for average inflation during the next thirty years. This rate is 4.5 percent per year. This is between the two rates of inflation for the period 1954 -1984, as measured first by the Consumer Price Index and second by the implicit price deflator of Gross National Product. (The CPI alone is not accurate over the period 1954-1984 because of a change in its definition in 1978.)

At inflation of 4.5 percent per year, it will take $3.75 in 2015 to equal the buying power of $1.00 today.

RATE OF INTEREST

The average rate of interest to be earned in the future on tribal investments is assumed to be 6.66 percent per year. We do not have a long enough history on the rate of return earned on tribal investments to make a calculation similar to that made for the rate of inflation. The Branch of Investments appears to attain a return of just over 2 percent above the rate of inflation. This performance must be monitored carefully.

TEN YEAR REVIEW

Recognizing the difficulties inherent in forecasting, the Tribal Council intends to review the budget forecast and plan at least every ten years to determine if it is correct.

DESCRIPTION OF COLUMNS

Fiscal Year: Each fiscal year ends on September 30 and begins on October 1 of the previous year. For instance, fiscal year 1986 began on October 1, 1985 and will end on September 30, 1986. For convenience, the fiscal year column is repeated on each page.

REVENUE

Interest on Reserve: Annual interest income on the reserve is calculated by multiplying the interest rate by the average balance in the reserve during the fiscal year.

Revenue From Resources: All revenue that is not either interest on the reserve or rental for Kerr Dam is included in this column. Usually, timber sales are a substantial portion of this amount.

But at present timber revenue is only $40,000; the remainder is from leases, fees, and other resource-related income. This revenue is predicted to increase at 2 percent per year.

Kerr Rental. Beginning on September 5, 1985, the annual charge for Kerr Dam is $9,000,000, payable in four equal installments on September 5, December 5, March 5, and June 5. Each September, the $9,000,000 is adjusted to account for inflation. Inflation is measured with the Consumer Price Index for all urban consumers. The change in the CPI from June to June is used to adjust the annual charge. The value of the CPI in June, 1985, was 322.3. If its value in June, 1986, is 336.8, then annual inflation will be 4.5%. The calculation is as follows:

$$.045 = 336.8/322.2 - 1$$

The annual charge is assumed to escalate at the rate of inflation given on the top of page one of the table. Note that because the annual charge changes each September 5th, Kerr Rental in each fiscal year consists of three payments at one rate and one payment at the next year's rate.

Kerr Rental in fiscal year 1985 is the sum of the payment in January for calendar year 1984, $2.6 million; the pro-rata rental amount of the old rental for calendar year 1985, $1,759,452, and one fourth of the new first year rental, $2.25 million.

Total Revenue. Total Revenue is the sum of Interest on Reserve, Revenue from Resources, and Kerr Rental.

EXPENDITURES

Tribal Government: Expenditures to run all tribal governmental programs are listed in this column. The cost in fiscal year 1985 is the estimated actual cost. The cost for fiscal year 1986 is the currently budgeted cost. Future Tribal Government expenditures are projected to increase at the rate of inflation.

Economic Development or Land Purchase. The figure for fiscal year 1985 is the actual expenditures for land purchase and enterprise capitalization. The figure for fiscal year 1986 is the budgeted amount. Future values are projected to increase at the rate of inflation.

Kerr Recapture. In order to be certain that funds will be available to pay the Conveyance Price in the year 2015, $500,000 escalated at the rate of inflation should be set aside annually.

Per Capitas. Two equal per capita payments of $500 will be made on September 1 and December 1 of each year. The September 1st payment is shown as a part of the per capita expense of the succeeding fiscal year. (This was done to make the interest on the reserve easier to estimate.) Although the value of per capita payment does not escalate, the total enrollment of the

## BUDGET SUMMARY

| FISCAL YEAR | TOTAL REVENUE | TOTAL EXPENDITURES | DEFICIT OR SURPLUS | END OF YEAR BALANCES | |
|---|---|---|---|---|---|
| | | | | RESERVE | KERR FUND |
| | | | | 9,508,935 | |
| 1985 | 11,038,795 | 8,418,119 | 2,620,676 | 12,129,611 | |
| 1986 | 10,898,598 | 7,723,500 | 3,175,098 | 15,304,709 | 533,300 |
| 1987 | 11,335,785 | 11,100,349 | 235,436 | 15,540,145 | 1,126,116 |
| 1988 | 11,804,285 | 11,363,864 | 440,421 | 15,980,566 | 1,783,493 |
| 1989 | 12,289,740 | 12,137,467 | 152,272 | 16,132,839 | 2,510,857 |
| 1990 | 12,793,493 | 12,421,600 | 371,893 | 16,504,732 | 3,314,050 |
| 1991 | 13,333,641 | 12,716,721 | 616,920 | 17,121,652 | 4,199,355 |
| 1992 | 13,912,844 | 13,023,313 | 889,531 | 18,011,182 | 5,173,527 |
| 1993 | 14,550,602 | 12,841,878 | 1,708,724 | 19,719,906 | 6,243,832 |
| 1994 | 15,251,075 | 13,172,940 | 2,078,134 | 21,798,041 | 7,418,077 |
| 1995 | 16,002,063 | 13,517,050 | 2,485,013 | 24,283,054 | 8,704,656 |
| 1996 | 16,807,216 | 13,874,779 | 2,932,438 | 27,215,492 | 10,112,584 |
| 1997 | 17,670,442 | 14,246,727 | 3,423,715 | 30,639,206 | 11,651,550 |
| 1998 | 18,595,920 | 14,633,520 | 3,962,401 | 34,601,607 | 13,331,957 |
| 1999 | 19,588,126 | 15,035,811 | 4,552,316 | 39,153,923 | 15,164,977 |
| 2000 | 20,651,848 | 15,454,283 | 5,197,565 | 44,351,488 | 17,162,607 |
| 2001 | 21,792,207 | 15,889,651 | 5,902,557 | 50,254,044 | 19,337,723 |
| 2002 | 23,014,686 | 16,342,659 | 6,672,027 | 56,926,071 | 21,704,145 |
| 2003 | 24,325,148 | 16,814,088 | 7,511,060 | 64,437,131 | 24,276,705 |
| 2004 | 25,729,866 | 17,304,751 | 8,425,115 | 72,862,246 | 27,071,315 |
| 2005 | 27,235,549 | 17,815,499 | 9,420,049 | 82,282,296 | 30,105,047 |
| 2006 | 28,849,374 | 18,347,222 | 10,502,152 | 92,784,448 | 33,396,210 |
| 2007 | 30,579,017 | 18,900,846 | 11,678,171 | 104,462,618 | 36,964,442 |
| 2008 | 32,432,687 | 19,477,344 | 12,955,343 | 117,417,961 | 40,830,801 |
| 2009 | 34,419,163 | 20,077,729 | 14,341,433 | 131,759,394 | 45,017,862 |
| 2010 | 36,547,831 | 20,703,061 | 15,844,770 | 147,604,164 | 49,549,830 |
| 2011 | 38,828,731 | 21,354,446 | 17,474,284 | 165,078,449 | 54,452,647 |
| 2012 | 41,272,594 | 22,033,042 | 19,239,552 | 184,318,000 | 59,754,117 |
| 2013 | 43,890,895 | 22,740,057 | 21,150,838 | 205,468,838 | 65,484,037 |
| 2014 | 46,695,902 | 23,476,754 | 23,219,148 | 228,687,986 | 71,674,333 |
| 2015 | 49,700,729 | 24,244,453 | 25,456,276 | 254,144,262 | 78,359,211 |

# Confederated Salish & Kootenai Tribes of the Flathead Nation

## Balance Sheet — Governmental Funds

## September 30, 2012

| | General Fund | Grants and Contracts Fund | Settlement Fund | Total Governmental Funds |
|---|---|---|---|---|
| **Assets** | | | | |
| Cash and cash equivalents | $ 106,168,244 | $ 38,835,796 | $ 10,464,166 | $ 155,468,206 |
| Investments | 25,113,407 | 10,014,345 | 11,132,582 | 46,260,334 |
| Restricted investments | 500,000 | - | - | 500,000 |
| Accounts receivable | 664,552 | 22,512 | - | 687,064 |
| Due from other governments | 280,279 | 11,903,530 | - | 12,183,809 |
| Due from other funds | 16,065,980 | - | 3,494,707 | 19,560,687 |
| Advances due from S&K Gaming, LLC | 2,807,051 | - | - | 2,807,051 |
| Inventory | 75,481 | - | - | 75,481 |
| Prepaid expense | 86,334 | 245,675 | 1,780 | 333,789 |
| Total assets | $ 151,761,328 | $ 61,021,858 | $ 25,093,235 | $ 237,876,421 |
| **Liabilities and Fund Balances** | | | | |
| Liabilities | | | | |
| Accounts payable | $ 1,275,600 | $ 2,108,693 | $ 2,986 | $ 3,387,279 |
| Accrued liabilities | 10,062,296 | 1,451,051 | 45,672 | 11,559,019 |
| Due to other funds | 11,676,408 | 7,517,487 | 6,141 | 19,200,036 |
| Due to fiduciary fund | 224,694 | - | - | 224,694 |
| Deferred revenues | 582 | 42,098,818 | 19,228,385 | 61,327,785 |
| Total liabilities | 23,239,580 | 53,176,049 | 19,283,184 | 95,698,813 |
| Fund balances | | | | |
| Nonspendable | | | | |
| Advances receivable | 2,807,051 | - | - | 2,807,051 |
| Inventory and prepaids | 161,815 | 245,675 | 1,780 | 409,270 |
| Restricted for | | | | |
| Minimum cash in bank requirement | 500,000 | - | - | 500,000 |
| Fish and wildlife | - | - | 5,808,271 | 5,808,271 |
| Health and human services | - | 7,600,134 | - | 7,600,134 |
| (Committed for Kerr Dam purchase) TLJ. | 31,183,589 | - | - | 31,183,589 |
| Unassigned | 93,869,293 | - | - | 93,869,293 |
| Total fund balances | 128,521,748 | 7,845,809 | 5,810,051 | 142,177,608 |
| Total liabilities and fund balances | $ 151,761,328 | $ 61,021,858 | $ 25,093,235 | $ 237,876,421 |

committed for Kerr Dam purchase (Dark Green Highlighter)

Add #40,000,000 Salazar Proceeds

The accompanying notes are an integral part of these financial statements.

## EXPENDITURES

| FISCAL YEAR | TRIBAL GOVERNMENT | ECONOMIC EVELOPMENT OR LAND PURCHASE | KERR RECAPTURE | PER CAPITAS .75% 500 1,000 | EDUCATION FUND | ELDERS' ASSISTANCE PROGRAM | GRAND TOTAL |
|---|---|---|---|---|---|---|---|
| 1985 | 3,318,523 | 1,998,496 | | 3,101,100 | | | 8,418,119 |
| 1986 | 3,500,000 | 500,000 | 500,000 | 3,123,500 | | 100,000 | 7,723,500 |
| 1987 | 3,657,500 | 522,500 | 522,500 | 6,293,349 | | 104,500 | 11,100,349 |
| 1988 | 3,822,088 | 546,013 | 546,013 | 6,340,549 | | 109,203 | 11,363,864 |
| 1989 | 3,994,081 | 570,583 | 570,583 | 6,388,103 | 500,000 | 114,117 | 12,137,467 |
| 1990 | 4,173,815 | 596,259 | 596,259 | 6,436,014 | 500,000 | 119,252 | 12,421,600 |
| 1991 | 4,361,637 | 623,091 | 623,091 | 6,484,284 | 500,000 | 124,618 | 12,716,721 |
| 1992 | 4,557,910 | 651,130 | 651,130 | 6,532,916 | 500,000 | 130,226 | 13,023,313 |
| 1993 | 4,763,016 | 680,431 | 680,431 | 6,581,913 | | 136,086 | 12,841,878 |
| 1994 | 4,977,352 | 711,050 | 711,050 | 6,631,277 | | 142,210 | 13,172,940 |
| 1995 | 5,201,383 | 743,048 | 743,048 | 6,681,012 | | 148,610 | 13,517,050 |
| 1996 | 5,435,393 | 776,485 | 776,485 | 6,731,120 | | 155,297 | 13,874,779 |
| 1997 | 5,679,986 | 811,427 | 811,427 | 6,781,603 | | 162,285 | 14,246,727 |
| 1998 | 5,935,585 | 847,941 | 847,941 | 6,832,465 | | 169,588 | 14,633,520 |
| 1999 | 6,202,686 | 886,098 | 886,098 | 6,883,709 | | 177,220 | 15,035,811 |
| 2000 | 6,481,807 | 925,972 | 925,972 | 6,935,336 | | 185,194 | 15,454,283 |
| 2001 | 6,773,489 | 967,641 | 967,641 | 6,987,351 | | 193,528 | 15,889,651 |
| 2002 | 7,078,296 | 1,011,185 | 1,011,185 | 7,039,757 | | 202,237 | 16,342,659 |
| 2003 | 7,396,819 | 1,056,688 | 1,056,688 | 7,092,555 | | 211,338 | 16,814,088 |
| 2004 | 7,729,676 | 1,104,239 | 1,104,239 | 7,145,749 | | 220,848 | 17,304,751 |
| 2005 | 8,077,511 | 1,153,930 | 1,153,930 | 7,199,342 | | 230,786 | 17,815,499 |
| 2006 | 8,440,999 | 1,205,857 | 1,205,857 | 7,253,337 | | 241,171 | 18,347,222 |
| 2007 | 8,820,844 | 1,260,121 | 1,260,121 | 7,307,737 | | 252,024 | 18,900,846 |
| 2008 | 9,217,782 | 1,316,826 | 1,316,826 | 7,362,545 | | 263,365 | 19,477,344 |
| 2009 | 9,632,582 | 1,376,083 | 1,376,083 | 7,417,764 | | 275,217 | 20,077,729 |
| 2010 | 10,066,048 | 1,438,007 | 1,438,007 | 7,473,397 | | 287,601 | 20,703,061 |
| 2011 | 10,519,021 | 1,502,717 | 1,502,717 | 7,529,448 | | 300,543 | 21,354,446 |
| 2012 | 10,992,377 | 1,570,340 | 1,570,340 | 7,585,919 | | 314,068 | 22,033,042 |
| 2013 | 11,487,033 | 1,641,005 | 1,641,005 | 7,642,813 | | 328,201 | 22,740,057 |
| 2014 | 12,003,950 | 1,714,850 | 1,714,850 | 7,700,134 | | 342,970 | 23,476,754 |
| 2015 | 12,544,128 | 1,792,018 | 1,792,018 | 7,757,885 | | 358,404 | 24,244,453 |

5th 10yr.

10yr

2nd 10yr

3rd 10yr

8.4

What is -8.4 in 1999?

Is this -8.4 the new Tribal Complex?

NO +8.4 following the -8.4 in 1999

## BUDGET SUMMARY

| FISCAL YEAR | TOTAL REVENUE | TOTAL EXPENDITURES | DEFICIT OR SURPLUS | END OF YEAR BALANCES | |
|---|---|---|---|---|---|
| | | | | RESERVE | KERR FUND |
| | | | | 9,508,935 | |
| 1985 | 11,038,795 | 8,418,119 | 2,620,676 | 12,129,611 | |
| 1986 | 10,898,598 | 7,723,500 | 3,175,098 | 15,304,709 | 533,300 |
| 1987 | 11,335,785 | 11,100,349 | 235,436 | 15,540,145 | 1,126,116 |
| 1988 | 11,804,285 | 11,363,864 | 440,421 | 15,980,566 | 1,783,493 |
| 1989 | 12,289,740 | 12,137,467 | 152,272 | 16,132,839 | 2,510,857 |
| 1990 | 12,793,493 | 12,421,600 | 371,893 | 16,504,732 | 3,314,050 |
| 1991 | 13,333,641 | 12,716,721 | 616,920 | 17,121,652 | 4,199,355 |
| 1992 | 13,912,844 | 13,023,313 | 889,531 | 18,011,182 | 5,173,527 |
| 1993 | 14,550,602 | 12,841,878 | 1,708,724 | 19,719,906 | 6,243,832 |
| 1994 | 15,251,075 | 13,172,940 | 2,078,134 | 21,798,041 | 7,418,077 |
| 1995 | 16,002,063 | 13,517,050 | 2,485,013 | 24,283,054 | 8,704,656 |
| 1996 | 16,807,216 | 13,874,779 | 2,932,438 | 27,215,492 | 10,112,584 |
| 1997 | 17,670,442 | 14,246,727 | 3,423,715 | 30,639,206 | 11,651,550 |
| 1998 | 18,595,920 | 14,633,520 | 3,962,401 | 34,601,607 | 13,331,957 |
| 1999 | 19,588,126 | 15,035,811 | 4,552,316 | 39,153,923 | 15,164,977 |
| 2000 | 20,651,848 | 15,454,283 | 5,197,565 | 44,351,488 | 17,162,607 |
| 2001 | 21,792,207 | 15,889,651 | 5,902,557 | 50,254,044 | 19,337,723 |
| 2002 | 23,014,686 | 16,342,659 | 6,672,027 | 56,926,071 | 21,704,145 |
| 2003 | 24,325,148 | 16,814,088 | 7,511,060 | 64,437,131 | 24,276,705 |
| 2004 | 25,729,866 | 17,304,751 | 8,425,115 | 72,862,246 | 27,071,315 |
| 2005 | 27,235,549 | 17,815,499 | 9,420,049 | 82,282,296 | 30,105,047 |
| 2006 | 28,849,374 | 18,347,222 | 10,502,152 | 92,784,448 | 33,396,210 |
| 2007 | 30,579,017 | 18,900,846 | 11,678,171 | 104,462,618 | 36,964,442 |
| 2008 | 32,432,687 | 19,477,344 | 12,955,343 | 117,417,961 | 40,830,801 |
| 2009 | 34,419,163 | 20,077,729 | 14,341,433 | 131,759,394 | 45,017,862 |
| 2010 | 36,547,831 | 20,703,061 | 15,844,770 | 147,604,164 | 49,549,830 |
| 2011 | 38,828,731 | 21,354,446 | 17,474,284 | 165,078,449 | 54,452,647 |
| 2012 | 41,272,594 | 22,033,042 | 19,239,552 | 184,318,000 | 59,754,117 |
| 2013 | 43,890,895 | 22,740,057 | 21,150,838 | 205,468,838 | 65,484,037 |
| 2014 | 46,695,902 | 23,476,754 | 23,219,148 | 228,687,986 | 71,674,333 |
| 2015 | 49,700,729 | 24,244,453 | 25,456,276 | 254,144,262 | 78,359,211 |

* Total Sum C.S.K.T Balance Sheet - Governmental Funds 09-30-2012 $31,183,589

Total Sum to be loaned to Energy Keepers Inc, from Salazar Proceeds $40,000,000

* $71,183,589

Why the need to loan any Salazar Proceeds?

Kerr Dam Purchase Price $18,000,000?

* $78,359,211
- 18,000,000
* $60,359,211 Surplus

# TRIBAL BUDGET FORECAST AND PLAN
Revised, 2/18/86

INFLATION: 4.50%
INTEREST RATE: 6.66%

| FISCAL YEAR | REVENUE: INTEREST ON RESERVE | FROM RESOURCES 2.0% | KERR RENTAL | TOTAL REVENUE |
|---|---|---|---|---|
| 1985 | 1,173,806 | 3,255,537 | 6,609,452 | 11,038,795 |
| 1986 | 767,348 | 1,030,000 | 9,101,250 | 10,898,598 |
| 1987 | 774,379 | 1,050,600 | 9,510,806 | 11,335,785 |
| 1988 | 793,881 | 1,071,612 | 9,938,793 | 11,804,285 |
| 1989 | 810,657 | 1,093,044 | 10,386,038 | 12,289,740 |
| 1990 | 825,178 | 1,114,905 | 10,853,410 | 12,793,493 |
| 1991 | 854,624 | 1,137,203 | 11,341,813 | 13,333,641 |
| 1992 | 900,701 | 1,159,947 | 11,852,195 | 13,912,844 |
| 1993 | 981,912 | 1,183,146 | 12,385,544 | 14,550,602 |
| 1994 | 1,101,372 | 1,206,809 | 12,942,893 | 15,251,075 |
| 1995 | 1,245,794 | 1,230,945 | 13,525,323 | 16,002,063 |
| 1996 | 1,417,689 | 1,255,564 | 14,133,963 | 16,807,216 |
| 1997 | 1,619,775 | 1,280,676 | 14,769,991 | 17,670,442 |
| 1998 | 1,854,990 | 1,306,289 | 15,434,641 | 18,595,920 |
| 1999 | 2,126,512 | 1,332,415 | 16,129,200 | 19,588,126 |
| 2000 | 2,437,771 | 1,359,063 | 16,855,014 | 20,651,848 |
| 2001 | 2,792,474 | 1,386,244 | 17,613,489 | 21,792,207 |
| 2002 | 3,194,621 | 1,413,969 | 18,406,096 | 23,014,686 |
| 2003 | 3,648,529 | 1,442,249 | 19,234,371 | 24,325,148 |
| 2004 | 4,158,855 | 1,471,094 | 20,099,917 | 25,729,866 |
| 2005 | 4,730,620 | 1,500,516 | 21,004,414 | 27,235,549 |
| 2006 | 5,369,236 | 1,530,526 | 21,949,612 | 28,849,374 |
| 2007 | 6,080,536 | 1,561,136 | 22,937,345 | 30,579,017 |
| 2008 | 6,870,803 | 1,592,359 | 23,969,525 | 32,432,687 |
| 2009 | 7,746,802 | 1,624,206 | 25,048,154 | 34,419,163 |
| 2010 | 8,715,820 | 1,656,690 | 26,175,321 | 36,547,831 |
| 2011 | 9,785,696 | 1,689,824 | 27,353,210 | 38,828,731 |
| 2012 | 10,964,868 | 1,723,621 | 28,584,105 | 41,272,594 |
| 2013 | 12,262,412 | 1,758,093 | 29,870,390 | 43,890,895 |
| 2014 | 13,688,090 | 1,793,255 | 31,214,557 | 46,695,902 |
| 2015 | 15,252,397 | 1,829,120 | 32,619,212 | 49,700,729 |

ASSUMED CONSTANTS:

| | |
|---|---|
| INFLATION | 4.50% |
| INTEREST RATE ON RESERVES | 6.66% |
| RESOURCE REVENUE GROWTH: | 2.00% |
| ENROLLMENT GROWTH: | .75% |
| PER CAPITA AMOUNT: | 500 |
| PER CAPITA PAYMENT DATES: | SEPTEMBER 1 |
| | DECEMBER 1 |

Resolution No. 86-02

RESOLUTION
OF THE GOVERNING BODY OF
THE CONFEDERATED SALISH & KOOTENAI TRIBES
OF THE FLATHEAD INDIAN RESERVATION, MT.

RESOLUTION ESTABLISHING LONG RANGE PLAN FOR USE OF THE KERR DAM RENTAL AND OTHER TRIBAL REVENUES

WHEREAS, The increased annual rental from Kerr Dam Hydroelectric Power Site Lease has generated a need for planning out use of these and other Tribal revenues; and

WHEREAS, to ensure that funds are set aside on an annual basis to provide for the payment of the conveyance cost and training costs of the Kerr Project upon the Tribes' takeover of the Kerr Dam operation in the thirtieth (30th) year of the existing Kerr License; and

WHEREAS, The Tribal Council has put forth substantial thought and effort into the development of a long range plan which would allocate funding for per capita distributions, Elder's Assistance Program, Land Acquisition and Economic Development, Education Fund, Kerr Recapture Fund, and Annual Budget for Tribal Government; and

WHEREAS, A part of the plan would establish the policy of placing into individual accounts one half of the per capita payments for each enrolled minor to be held and earn interest until said minor reaches legal age; and

WHEREAS, The specific plans and eligibility criteria for the Elder's Assistance Program and Education Fund are to be established at a later date;

NOW, THEREFORE BE IT RESOLVED By the Tribal Council of Confederated Salish and Kootenai Tribes that the attached Long Range Tribal Fiscal Plan is hereby approved and adopted; and

BE IT FURTHER RESOLVED By the Tribal Council that the Tribal Council monitor the plan through the annual budget process to ensure that deficit spending not occur in any year of said plan; and

BE IT FURTHER RESOLVED By the Tribal Council that an in depth review the status of the plan be done at least each ten years to ensure that the intent and purpose of the plan is being met; and

BE IT FURTHER RESOLVED By the Tribal Council that the planned per capita distributions contained in said plan are to be scheduled to be paid out the first part of September and the first part of December each year; and

BE IT FURTHER RESOLVED That one half the per capita distribution for each minor enrolled in the Tribes is to be issued to said minor's parent or guardian and the other one half is to be placed in a trust account with the Bureau of Indian Affairs to accumulate and earn interest until said minor has reached legal age.

## CERTIFICATION

The foregoing Resolution was adopted by the Tribal Council on the 4th day of October, 1985, with a vote of 10 for 0 opposed and 0 not voting, pursuant to authority vested in it by Article VI, Section 1(a) of the Tribes' Constitution and Bylaws; said Constitution adopted and approved under Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended.

Joseph Feldman
CHAIRMAN, TRIBAL COUNCIL

ATTEST:

EXECUTIVE SECRETARY

# CONSTITUTION AND BYLAWS OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION, as Amended

**APPROVED OCTOBER 28, 1935**

# CONSTITUTION AND BYLAWS OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION, as Amended

## PREAMBLE

We, the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, in order to establish a more responsible organization, promote our general welfare, conserve and develop our lands and resources, and secure to ourselves and our posterity the power to exercise certain rights of self-government not inconsistent with Federal, State, and local laws, do ordain and establish this Constitution for the Confederated Tribes of the Flathead Reservation.

## ARTICLE I — TERRITORY

The jurisdiction of the Confederated Salish and Kootenai Tribes of Indians shall extend to the territory within the original confines of the Flathead Reservation as defined in the Treaty of July 16, 1855, and to such other lands without such boundaries, as may hereafter be added thereto under any law of the United States, except as otherwise provided by law.

## ARTICLE II — MEMBERSHIP[1]

**Section 1.** The membership of the Confederated Tribes of the Flathead Reservation is confirmed in accordance with the per capita rolls as from time to time prepared.

**Section 2.** Membership in the Tribes on and after the date of the adoption of this amendment shall consist of all living persons whose names appear on the per capita roll of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, as prepared for the per capita distribution as shown on the per capita roll paid in February 1959 together with all children of such members, born too late to be included on such per capita roll and prior to the effective date of this section who possess one-fourth (1/4) or more Salish or Kootenai Blood or both and are born to a member of the Confederated Tribes of the Flathead Indian Reservation. Subject to review by the Secretary of the Interior, the Tribal Council shall make any necessary corrections in this 1959 membership roll so that no one eligible for membership under prior constitutional provisions shall be excluded therefrom.

**Section 3.** Future membership may be regulated from time to time by ordinance of the Confederated Tribes subject to review by the Secretary of the Interior. Until and unless an ordinance is adopted any person shall be enrolled as a member who shall (a) apply, or have application made on his behalf, establishing eligibility under this provision; (b) show that he is a natural child of a member of the Confederated Tribes; (c) that he

[1] Amendment 2, adopted April 1, 1960

possesses one–quarter (1/4) degree or more blood of the Salish or Kootenai Tribes or both, of the Flathead Indian Reservation, Montana; (d) is not enrolled on some other reservation.

**Section 4.** The Tribal Council shall have the power to enact and promulgate ordinances, subject to review by the Secretary of the Interior, governing the adoption of persons as members of the Confederated Salish and Kootenai Tribes.

**Section 5.** Membership in the Confederated Tribes may be lost (1) by resignation in writing to the Tribal Council; (2) by enrollment of the member with another Indian tribe; (3) by establishing a legal residence in a foreign country; (4) upon proof of lack of eligibility for enrollment, or fraud in obtaining enrollment, with due notice and opportunity to be heard and defend before the Tribal Council, subject to appeal to the Secretary of the Interior, whose decision shall be confined to the record made in such proceeding which, if supported by substantial evidence, shall be binding.

**Section 6.** Wherever the term "Indian Blood" shall have been used herein or in tribal ordinances, unless the context shall require a different meaning, it shall be determined to mean the blood of either or both the Kootenai or the Salish Tribes of the Flathead Reservation.

**Section 7.** The membership roll of the Confederated Salish and Kootenai Tribes of the Flathead Reservation shall be kept current by striking therefrom the names of persons who have died or have lost membership pursuant to this Constitution and adding thereto the names of persons who shall have established eligibility or been adopted. The roll so prepared shall be the basis for determining the right of persons whose names appear thereon to share in annual per capita distribution of funds or in any other tribal property, subject to Secretarial approval.

**Section 8.** The Tribal Council shall have the authority to prescribe rules to be followed in compiling a membership roll in accordance with the provisions of this article, the completed roll to be approved by the Tribal Council of the Confederated Salish and Kootenai Tribes. In case of distribution of tribal assets, the roll shall be submitted to the Secretary of the Interior for final approval as may be provided by law.

**Section 9.** No person shall be entitled to receive a per capita payment or share in any other tribal assets which were distributed prior to the date of his actual enrollment.

## ARTICLE III — THE TRIBAL COUNCIL

**SECTION 1.** The governing body of the Confederated Salish and Kootenai Tribes of the Flathead Reservation shall be the Tribal Council.

**SECTION 2.** The Council shall consist of ten councilmen to be elected from the districts as set forth hereafter, and Chiefs Martin Charlo and Eneas Paul Koostahtah.

**SECTION 3.** Representation from the districts hereby designated shall be as follows: Jocko Valley and Mission Districts, two councilmen each; Ronan, Pablo, Polson, Elmo-Dayton, Hot Springs-Camas Prairie, and Dixon, one councilmen each.

**SECTION 4.** The Tribal Council shall have the power to change the districts and the representation from each district based on community organization or otherwise, as deemed advisable, such change to be made by ordinance, but the total number of delegates shall not be changed as provided for in Section 2 of Article III of the Constitution.

**SECTION 5.** The Tribal Council so organized shall elect from within its own number a chairman, and a vice chairman, and from within or without its own membership, a secretary, treasurer, sergeant-at-arms, and such other officers and committees as may be deemed necessary.

**SECTION 6.** No person shall be a candidate for membership in the Tribal Council unless he shall be a member of the Confederated Tribes of the Flathead Reservation and shall have resided in the district of his candidacy for a period of one year next preceding the election.

**SECTION 7.** The Tribal Council of the Confederated Tribes of the Flathead Reservation shall be the sole judge of the qualifications of its members.

## ARTICLE IV — NOMINATIONS AND ELECTIONS[2]

**SECTION 1.** The first election of a Tribal Council under this Constitution shall be called and supervised by the present Tribal Council within 30 days after the ratification and approval of this Constitution, and thereafter elections shall be held every two years on the third Saturday prior to the expiration of the terms of office of the members of the Tribal Council. At the first election, five councilmen shall be elected for a period of two years and five for a period of four years. The term of office of a councilman shall be for a period of four years unless otherwise provided herein.

**SECTION 2.** The Tribal Council or an election board appointed by the Council shall determine rules and regulations governing all elections.

**SECTION 3.** Any qualified member of the Confederated Tribes may announce his candidacy for the Council, within the district of his residence, notifying the Secretary of the Tribal Council in writing of his candidacy at least 15 days prior to the election. It shall be the duty of the Secretary of the Tribal Council to post in each district at least 10 days before the election, the names of all candidates for the Council who have met these requirements. Where more than two members have filed for an office a Primary Election shall be held at least 30 days prior to the General Election. Only the two

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[2] Amendment 5, adopted ?

candidates for each office receiving the most votes at such Primary Election shall be eligible to run for office in the General Election. Where no more than two members have filed for an office, a Primary Election will be unnecessary.

**SECTION 4.** The Tribal Council, or a board appointed by the Council, shall certify to the election of the members of the Council within 5 days after the elections returns.

**SECTION 5.** Any member of the Confederated Tribes of the Flathead Reservation who is 21 years of age or over and who has maintained a legal residence for at least one year on the Flathead Reservation shall be entitled to vote.

**SECTION 6.** The Tribal Council, or a board appointed by the Tribal Council, shall designate the polling places and appoint all election officials.

## ARTICLE V — VACANCIES AND REMOVAL FROM OFFICE

**SECTION 1.** If a councilman or official shall die, resign, permanently leave the reservation, or be removed from office, the Council shall declare the position vacant and appoint a successor to fill the unexpired term, provided that the person chosen to fill such vacancy shall be from the district in which such vacancy occurs.

**SECTION 2.** Any councilman who is proven guilty of improper conduct or gross neglect of duty may be expelled from the Council by a two-thirds vote of the membership of the Council voting in favor of such expulsion, and provided further, that the accused member shall be given full and fair opportunity to reply to any and all charges at a designated Council meeting. It is further stipulated that any such member shall be given a written statement of the charges against him at least five days before the meeting at which he is to appear.

## ARTICLE VI — POWERS AND DUTIES OF THE TRIBAL COUNCIL[3]

**SECTION 1.** The Tribal Council shall have the power, subject to any limitations imposed by the Statutes or the Constitution of the United States, and subject to all express restrictions upon such powers contained in this Constitution and attached Bylaws;

(a) To regulate the uses and disposition of tribal property, to protect and preserve the tribal property, wildlife and natural resources of the Confederated Tribes, to cultivate Indian arts, crafts, and culture, to administer charity; to protect the health, security, and general welfare of the Confederated Tribes.
(b) To employ legal counsel for the protection and advancement of the rights of the Flathead Confederated Tribes and their members, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior.

[3] Amendment 7, adopted October 8, 1981

(c) To negotiate with the Federal, State and local governments on behalf of the Confederated Tribes, and to advise and consult with the representatives of the Department of the Government of the United States on all matters affecting the affairs of the Confederated Tribes.

(d) To approve or veto any sale, disposition, lease or encumbrance of tribal lands and tribal assets which may be authorized or executed by the Secretary of the Interior, the Commissioner of Indian Affairs, or any other agency of the Government, provided that no tribal lands shall be sold or encumbered or leased for a period in excess of five years, except for Governmental purposes.

(e) To advise with the Secretary of the Interior with regard to all appropriation estimates or Federal projects for the benefit of the Confederated Tribes, prior to the submission of such estimates to the Congress.

(f) To manage all economic affairs and enterprises of the Confederated Tribes in accordance with the terms of a charter to be issued by the Secretary of the Interior.

(g) To make assignments of tribal lands to members of the Confederated Tribes in conformity with Article VIII of this Constitution.

(h) To appropriate for tribal use of the reservation any available applicable tribal funds in the Tribal treasury, provided that any such appropriation in excess of $25,000.00 shall be subject to review by the Secretary of the Interior.

(i) To promulgate and enforce ordinances, subject to review by the Secretary of the Interior, which would provide for assessments or license fees upon nonmembers doing business within the reservation, or obtaining special rights or privileges, and the same may also be applied to members of the Confederated Tribes, provided such ordinances have been approved by a referendum of the Confederated Tribes.

(j) To exclude from the restricted lands of the reservation persons not legally entitled to reside thereon, under ordinances which may be subject to review by the Secretary of the Interior.

(k) To enact resolutions or ordinances not inconsistent with Article II of this Constitution governing adoptions and abandonment of membership.

(l) To promulgate and enforce ordinances which shall be subject to review by the Secretary of the Interior, governing the conduct of members of the Confederated Tribes, and providing for the maintenance of law and order and the administration of justice by the establishment of an Indian Court, and defining its powers and duties.

(m) To purchase land of members of the Confederated Tribes for public purposes under condemnation proceedings in courts of competent jurisdiction.

(n) To promulgate and enforce ordinances which are intended to safeguard and promote the peace, safety, morals and general welfare of the Confederated Tribes by regulating the conduct of trade and the use and disposition of property upon the reservation, providing that any ordinance directly affecting nonmembers shall be subject to review by the Secretary of the Interior.

(o) To charter subordinate organizations for economic purposes and to regulate the activities of all cooperative and other associations which may be organized under any charter issued under this Constitution.

(p) To regulate the inheritance of real and personal property, other than allotted lands, within the Flathead Reservation, subject to review by the Secretary of the Interior.

(q) To regulate the domestic relations of members of the Confederated Tribes.
(r) To recommend and provide for the appointment of guardians for orphans, minor members of the Confederated Tribes, and incompetents subject to the approval of the Secretary of the Interior, and to administer tribal and other funds or property which may be transferred or entrusted to the Confederated Tribes of Tribal Council for this purpose.
(s) To create and maintain a tribal fund by accepting grants or donations from any person, State or the United States.
(t) To delegate to subordinate boards or to cooperative associations which are open to all members of the Confederated Tribes, any of the following powers, reserving the right to review any action taken by virtue of such delegated power.
(u) To adopt resolutions or ordinances to effectuate any of the foregoing powers.

**Section 2.** Any resolution or ordinance which by the terms of this Constitution is subject to review by the Secretary of the Interior, shall be presented to the Superintendent of the Reservation who shall, within ten days thereafter, approve or disapprove the same, and if such ordinance or resolution is approved, it shall thereupon become effective, but the Superintendent shall transmit a copy of the same, bearing his endorsement, to the Secretary of the Interior who may, within 90 days from the date of enactment, rescind said ordinance or resolution for any cause, by notifying the Council of such action. Provided, that if the Superintendent shall refuse to approve any resolution or ordinance submitted to him within ten days after its enactment, he shall advise the Council of his reasons therefor; and the Council, if such reasons appear to be insufficient, may refer it to the Secretary of the Interior, who may pass upon same and either approve or disapprove it within 90 days from its enactment.

**SECTION 3.** The council of the Confederated Tribes may exercise such further powers as may in the future be delegated to it by the Federal Government, either through order of the Secretary of the Interior or by Congress, or by the State Government or by members of the Confederated Tribes.

**SECTION 4.** Any rights and powers heretofore vested in the Confederated Tribes but not expressly referred to in this Constitution shall not be abridged by this article, but may be exercised by the members of the Confederated Tribes through the adoption of appropriate Bylaws and Constitutional amendments.

## ARTICLE VII — BILL OF RIGHTS[4]

**SECTION 1.** All members of the Confederated Tribes over the age of 18 years shall have the right to vote in all tribal elections, subject to any restrictions as to residence as set forth in Article IV.

**SECTION 2.** All members of the Confederated Tribes shall be accorded equal opportunities to participate in the economic resources and activities of the reservation.

[4] Amendment 6, adopted ?

CONSTITUTION AND BYLAWS
of the
SALISH AND KOOTENAI TRIBES
of the
FLATHEAD RESERVATION
MONTANA

Amendment III

Article VIII of the Constitution entitled "Land" is hereby amended in its entirety to read as follows:

"Section 1. Land Transactions - Subject to any limitations imposed by this Constitution and Bylaws, to any applicable Federal statute and to the approval of the Secretary of the Interior, the Tribal Council may:

(1) Purchase or receive by gift or relinquishment land or any interest therein, and may lease, exchange (with or without the giving or receipt of other consideration), encumber, and assign tribal lands or any interest therein; and

(2) Adopt ordinances or resolutions governing any or all such transactions.

"Section 2. Saving Clause - Nothing herein shall be held to impair rights heretofore acquired in any allotment or assignment held by any individual."

CERTIFICATION OF ADOPTION

Pursuant to an order approved January 20, 1960, by the Assistant Secretary of the Interior, the attached amendment to the Constitution of the Confederated Salish and Kootenai Tribes of the Flathead Reservation was submitted for ratification to the qualified voters of the Salish and Kootenai Indian Tribes and was on April 1, 1960, duly ratified by a vote of 617 for, and 329 against, in an election in which at least 30 percent of those entitled to vote cast their ballots in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378).

(sgd.) Jerome Hewankorn
Vice-Chairman, Tribal Council,
Confederated Salish and Kootenai Tribes

(sgd.) E. W. Morigeau
Actg. Secretary, Tribal Council,
Confederated Salish and Kootenai Tribes

(sgd) Charles S. Spencer
Superintendent, Flathead Agency

APPROVAL

I, Fred A. Seaton, Secretary of the Interior of the United States of America, by virtue of the authority granted me by the Act of June 18, 1934 (48 Stat. 984), as amended, do hereby approve the attached Amendment III to the Constitution of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, to be effective as of April 1, 1960, the date of the ratification by the qualified voters of the tribes.

Approval recommended:

(sgd) Glenn L. Emmons
Commissioner, Bureau of Indian Affairs

(sgd) Fred A. Seaton
Secretary of the Interior
(SEAL)

May 5, 1960 Washington, D. C.

**SECTION 3.** All members of the Confederated Tribes may enjoy without hindrance freedom of worship, speech, press, and assembly.

**SECTION 4.** Any member of the Confederated Tribes accused of any offense, shall have the right to a prompt, open, and public hearing, with due notice of the offense charged, and shall be permitted to summon witnesses in his own behalf and trial by jury shall be accorded, when duly requested, by any member accused of any offense punishable by more than 30 days imprisonment, and excessive bail or cruel or unusual punishment shall not be imposed.

## ARTICLE VIII — LAND[5]

**SECTION 1.** Allotted lands, including heirship lands, within the Flathead Reservation, shall continue to be held as heretofore by their present owners. The right of the individual Indian to hold or to part with his land, as under existing law, shall not be abrogated by anything contained in this Constitution, but the owner of restricted land, may, with the approval of the Secretary of the Interior, voluntarily convey his land to the Confederated Tribes either in exchange for a money payment or in exchange for an assignment covering the same land of other land, as hereinafter provided.

The Tribal Council shall have the right to exchange tribal lands for individual allotments when necessary for consolidation of tribal holdings and subject to approval of the Secretary of the Interior. Such exchanges shall be based on the appraised value of the lands so exchanged, and the individual Indian shall hold the land so exchanged in the same manner as the original allotment.

**SECTION 2.** The unallotted lands of the Flathead Reservation and all lands, which may hereafter be acquired by the Flathead Confederated Tribes or by the United States in trust for the Flathead Confederated Tribes, shall be held as tribal land and no part of such land shall be mortgaged or sold. Tribal lands shall not be allotted to individuals but may be assigned to members of the Confederated Tribes as hereinafter provided.

**Section 3.** Tribal lands may be leased by the Tribal Council, with the approval of the Secretary of the Interior, for such periods of time as are permitted by law.

In the leasing of tribal lands preference shall be given, first, to Indian cooperative associations, and secondly, to individual Indians who are members of the Confederated Tribes. No lease of tribal land to a non-member shall be made by the Tribal Council unless it shall appear that no Indian cooperative association of individual member of the Confederated Tribes is able and willing to use the land and to pay a reasonable fee for such use.

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[5] Amendment 3, adopted April 1, 1960

Grazing permits covering tribal land may be issued by the Tribal Council with the approval of the Secretary of the Interior in the same manner and upon the same terms as leases.

**Section 4.** In any assignment of tribal lands which now are owned by the Confederated Tribes or which may hereafter be acquired for the Confederated Tribes by the United States, or purchased by the Confederated Tribes out of tribal funds, preference shall be given, first, to heads of families which are entirely landless, and, secondly, to heads of families which have no allotted lands or interests in allotted lands but shall have already received assignments consisting of less than 80 acres of agricultural land, or other land or interest in land of equal value.

No allotted member of the Confederated Tribes who may hereafter have the restrictions upon his land removed and whose land may thereafter be alienated shall be entitled to receive an assignment of lands as a landless Indian.

Assignments made under this section shall be for the primary purpose of establishing homes for landless Indian, and shall be known as "Standard Assignments."

The Tribal Council may, if it seems fit, charge a fee of not to exceed $5.00 on approval of an assignment of land made under this section.

**Section 5.** If any member of the Confederated Tribes holding a standard assignment of land shall, for a period of one year, fail to use the land so assigned, or shall use such land for any unlawful purposes, his assignment may be cancelled by the Tribal Council after he has had due notice and an opportunity to be heard, and the said land may be reassigned in accordance with the provisions of Section 4 of this article.

Upon the death of any Indian holding a "Standard Assignment," his heirs, or other individuals, designated by him by will or by written request, shall have a preference in the reassignment of the land, provided such persons are members of the Confederated Tribes who would be eligible to receive a "Standard Assignment."

**Section 6.** Any member of the Confederated Tribes who owns an allotment or any share of heirship land, or any unencumbered deeded land within the reservations, may voluntarily transfer his interest in such land to the Confederated Tribes in exchange for an assignment to the same land or to other lands of equal value. If the assignee prefers, he may receive, in lieu of a specific tract of land, a proportionate share in a larger grazing unit.

Assignments made under Section shall be known as "Exchange Assignments."

**Section 7.** Exchange assignments may be used by the assignee or leased by him to Indian cooperative associations, to individual members of the Confederated Tribes, or, if no individual Indian or Indian cooperative association is able and willing to rent the land

at a reasonable fee, such assignments may be leased to non-Indians in the same manner as allotted lands.

**Section 8.** Upon the death of the holder of any exchange assignment, such land shall be reassigned by the Tribal Council to his heirs or devisees, subject to the following conditions:

(a) Such land may not be reassigned to any heirs or devisees that are not members of the Confederated Tribes, except that a life assignment may be made to the surviving widower or widow of the holder of an assignment.
(b) Such lands may not be reassigned to any heir or devisees who already holds more than 320 acres of grazing land, or other land or interests in lands of equal value, either under allotment or under assignment.
(c) Such lands may not be subdivided into units smaller that 160 acres, and no area of agricultural land shall be subdivided into units smaller than two and one-half acres, except that land used for buildings of other improvements may be divided to suit the convenience of the parties. Where it is impossible to divide the land properly among the eligible heirs or devisees, the Tribal Council shall issue to the eligible heirs or devisees, grazing permits or other interest in tribal lands of the same value as the assignment of the decedent.
(d) If there are no eligible heirs or devisees of the decedent, the land shall be eligible for reassignment in accordance with the provisions of Section 4 of this Article.

**Section 9.** Improvements of any character made upon assigned land may be bequeathed to and inherited by members of the Confederated Tribes, or otherwise disposed of under such regulations, as the Tribal Council shall provide. No permanent improvements shall be removed from the land without the consent of the Tribal Council.

**Section 10.** Assignments may be exchanged between members of the Confederated Tribes by common consent in such manner, as the Tribal Council shall designate.

**Section 11.** Tribal funds may be used, with the consent of the Secretary of the Interior, to acquire land under the following conditions:

(a) Land within the Flathead Reservation, or adjacent to the boundaries thereof which is not now in Indian ownership, may be purchased by or for the Confederated Tribes.
(b) Restricted land which is in heirship status at the time of the adoption and approval of this Constitution may be purchased by or for the Confederated Tribes with the consent of all the adult heirs, and the legal guardian of minor heirs, or incompetent heirs, payment therefore to be made as may be agreed upon.
(c) Land owned by any member of the Confederated Tribes who is over the age of 60 years, or who is physically incapacitated, may be transferred by its owner to the Confederated Tribes in exchange for a pension or not more than twice the annual rental value of the land for the life of the pensioner, to be paid out of available tribal funds.

(d) Land in excess of 320 acres owned by any member of the Confederated Tribes, with the consent of the owner, payments to be made under such terms as may be agreed upon.
(e) Land owned by any member of the Confederated Tribes who desires to leave the reservation permanently may be purchased by the Confederated Tribes, under such terms as may be agreed upon.

**Section 12.** Applications for assignments shall be filed with the Secretary of the Council and shall be in writing, setting forth the name of the person or persons applying for the land and as accurate a description of the land desired as the circumstances will permit. Notices of all applications received by the Secretary shall be posed by him in the agency office and in at least three conspicuous places in the district in which the land is located, for not less than 20 days before action is taken by the Council.

Any member of the Confederated Tribes wishing oppose the granting of an assignment shall do so in writing, setting forth his objections, to be filed with the Secretary of the Council, and may, if he so desires, appear before the Council to present evidence. The Secretary of the Council shall furnish the Superintendent or other officer in charge of the agency a complete record of all action taken by the Council on the application for assignment of land, and a complete record of assignments shall be kept in the agency office and shall be open for inspection by all members of the Confederated Tribes.

The Council shall draw up one or more forms for standard and exchange assignments, which shall be subject to the approval of the Secretary of the Interior.

## ARTICLE IX — REFERENDUM

**SECTION 1.** Upon a petition of at least one-third (1/3) of the eligible voters of the Confederated Tribes, or upon the request of a majority of the members of the Tribal Council, any enacted or proposed ordinance or resolution of the Council shall be submitted to a popular referendum, and the vote of a majority of the qualified voters voting in such referendum shall be conclusive and binding on the Tribal Council, provided that at least thirty percent (30%) of the eligible voters shall vote in such election.

## ARTICLE X — AMENDMENTS

**Section 1.** This Constitution and Bylaws may be amended by a majority vote of the qualified voters of the Confederated Tribes voting at an election called for that purpose by the Secretary of the Interior, provided that at least thirty percent (30%) of those entitled to vote shall vote in such election; but no amendment shall become effective until it shall have been approved by the Secretary of the Interior. It shall be the duty of the Secretary of the Interior to call an election on any proposed amendment, at the request of two-thirds (2/3) of the Council, or upon presentation of a petition signed by one-third (1/3) of the qualified voters, members of the Confederated Tribes.

# BYLAWS

## ARTICLE I — THE TRIBAL COUNCIL

**SECTION 1.** The Chairman of the Council shall preside over all meetings of the Council, perform all duties of chairman, and exercise any authority detailed to him, and he shall be entitled to vote on all questions.

**SECTION 2.** The vice-chairman shall assist the chairman when called on so to do, in the absence of the chairman, shall preside, and when so presiding shall have all the privileges, duties, and responsibilities of the chairman.

**SECTION 3.** The Council secretary shall forward a copy of the minutes of all meetings to the Superintendent of the Reservation and to the Commissioner of Indian Affairs.

**SECTION 4.** The duties of all appointed boards or officers of the organization shall be clearly defined by resolutions of the Council at the time of their creation or appointment. Such boards and officers shall report from time to time as required to the Council and their activities and decisions shall be subject to review by the Council upon petition of any person aggrieved.

**SECTION 5.** Newly elected members who have been duly certified shall be installed at the first regular meeting of the Tribal Council.

**SECTION 6.** Each member of the Tribal Council and each officer or subordinate officer, elected or appointed hereunder, shall take an oath of office prior to assuming the duties thereof, by which oath, he shall pledge himself to support and defend the Constitution of the United States and this Constitution and Bylaws. The following form of oath of office shall be given: "I _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, to carry out faithfully and impartially, the duties of my office to the best of my ability; to cooperate, promote, and protect the best interests of my Tribe, in accordance with this Constitution and Bylaws."

**SECTION 7.** Regular meetings of the Tribal Council shall be held on the first Friday of January, April, July, and October, at 9:00 O'clock a.m., at the Flathead Agency.

**SECTION 8.** Special meetings may be called by a written notice signed by the chairman or a majority of the Tribal Council and when so called the Tribal Council shall have the power to transact business as in regular meetings.

**SECTION 9.** No business shall be transacted unless a quorum is present which shall consist of two-thirds (2/3) of the entire membership.

**SECTION 10.** Order of business:

(a) Call to order by chairman.
(b) Roll call.
(c) Reading of minutes of last meeting.
(d) Unfinished business.
(e) Reports.
(f) New business.
(g) Adjournment.

**SECTION 11.** It shall be the duty of each member of the Tribal Council to make reports to the district from which he is elected, concerning the proceedings of the Tribal Council.

**SECTION 12.** The Tribal Council may prescribe such salaries for officers or members of the Council, as it deems advisable, from such funds as may be available.

## ARTICLE II — ORDINANCES AND RESOLUTIONS

**SECTION 1.** All final decisions of the Council on matters of general and permanent interest to the members of the Confederated Tribes shall be embodied in ordinances. Such ordinances shall be published from time to time for the information and education of the members of the Confederated Tribes.

**SECTION 2.** All final decisions of the Council on matters of temporary interest (such as action on the reservation budget for a single year, or petition to Congress or the Secretary of the Interior) or relating especially to particular individuals or officials (such as adoption of members, instructions for tribal employees or rules of order for the Council) shall be embodied in resolutions. Such resolutions shall be recorded in a special book, which shall be open to inspection by members of the Confederated Tribes.

**SECTION 3.** All questions of procedure (such as acceptance of Committee reports or invitations to outsiders to speak) shall be decided by action of the Council or by ruling of the Chairman, if no objection is heard.

In all ordinances, resolutions or motions the Council may act by majority vote, but all matters of importance shall be fully discussed and reasonable attempt shall be made to secure unanimous agreement.

**SECTION 4.** Legislative forms. Every ordinance shall begin with the words: "Be it enacted by the Council of the Confederated Salish and Kootenai Tribes—."

**SECTION 5.** Every resolution shall begin with the words: "Be it resolved by the Council of the Confederated Salish and Kootenai Tribes—."

**SECTION 6.** Every ordinance or resolution shall contain a recital of the laws of the United States and the provisions of this Constitution under which authority for the said ordinance or resolution is found.

## ARTICLE III — RATIFICATION OF CONSTITUTION AND BYLAWS

This Constitution and the attached Bylaws, when adopted by a majority vote of the voters of the Confederated Tribes voting at a special election called by the Secretary of the Interior, in which at least thirty percent (30%) of those entitled to vote shall vote, shall be submitted to the Secretary of the Interior for his approval, and shall be in force from the date of such approval.

## CERTIFICATE OF ADOPTION

Pursuant to an order, approved September 25, 1935, by the Secretary of the Interior, the attached Constitution and Bylaws were submitted for ratification to the members of the Confederated Salish and Kootenai Tribes of the Flathead Reservation and were on October 4, 1935, duly adopted by a majority vote of the members of said voting in an election in which over thirty percent (30%) of those entitled to vote cast their ballots, in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 14, 1935 (Pub., No. 147, 74th Cong.)

Nitzschke
Mulsted
Jacobson
Anderson
Lancaster
Essay
Sutton

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

RECEIVED
APR - 1979

MAY 31 1979

OCT 1997
RECEIVED
FLATHEAD AGENCY
PABLO, MT

Memorandum FIELD SOLICITOR
Minneapolis, Minn.

To: Solicitor
Assistant Secretary--Indian Affairs

From: Associate Solicitor, Indian Affairs

Subject: Numerous allotment transfers void due to administrative error

The Twin Cities Field Solicitor has called our attention to a serious problem involving conveyances of inherited allotments pursuant to the Act of May 14, 1948 (25 U.S.C. §483) [hereinafter referred to as the 1948 Act]. The problem is potentially as troublesome as some of the eastern Indian land claims, as it involves over 500 conveyances in the Minnesota Agency alone and perhaps hundreds more elsewhere.

In short, the 1948 Act authorized the Secretary to approve real estate conveyances "upon application of the Indian owners" with respect to interests in land held by individual Indians on reservations of tribes organized under the Indian Reorganization Act of 1934. The problem is that between 1948 and 1958 BIA officials approved numerous conveyances of inherited allotments without the requisite consents of all the Indian land owners. This was done notwithstanding a June 24, 1955, Memorandum from the Associate Solicitor for Indian Affairs to the Commissioner of Indian Affairs advising that the interests of a non-consenting owner may not be sold by the Secretary. As a result, it appears that numerous transactions were entered into without the requisite authority and are therefore void. See Ewert v. Bluejacket, 259 U.S. 159 (1922). Current holders of those 160-acre allotments include non-Indians, municipalities, Indian tribes, and federal agencies such as the U.S. Forest Service. Their titles now suffer from a severe cloud which is a direct result of unauthorized administrative action.

A further complication is that many of the heirs whose interests were transferred without their consent often did not receive much if any of the consideration paid for their interests because that money was used to pay off the debts of the deceased allottee, including state old age assistance claims contrary to the ruling in Running Horse v. Udall, 211 F.Supp. 586 (D.D.C. 1962). It should be noted, however, that this practice was endorsed by the Solicitor's Office on a number of occasions.

OPTIONAL FORM 99 (7-90)
FAX TRANSMITTAL
# of pages ▸ 4

| To BUD MORAN | From RON APPELBAUM |
|---|---|
| Dept./Agency | Phone # |
| Fax # 5069 | Fax # |

NSN 7540-01-317-7368 5099-101 GENERAL SERVICES ADMINISTRATION

Admin. mf

Supt.

Route Copy to Tom Lozeau

Evidently the BIA officials responsible for the conveyance approvals during this period were of the view that the 1948 Act merely reinstated a provision in section 1 of the Act of June 25, 1910, to the effect that if the Secretary decides that one or more of the heirs to an allotment is incompetent, "he may, in his discretion, cause such lands to be sold." 25 U.S.C. §372. The Secretary's authority under that provisibn was nullified with respect to allotments on IRA reservations by section 4 of the IRA (25 U.S.C. §464), which prohibits the approval of any conveyance or transfer of restricted Indian lands. The 1948 Act was intended to overcome that prohibition, but it did not merely reinstate the 1910 Act. Rather, it provided a new standard for the conveyances of allotments, namely that such conveyances be made only "upon the application of the Indian owner." A detailed discussion of the legal issues may be found in a March 7, 1978, Memorandum from the Twin Cities Field Solicitor (attached).

OPTIONS

The first, and perhaps most obvious alternative, is to recommend to the Justice Department that suits in ejectment or to quiet title be filed on behalf of the beneficial owners of the allotments unlawfully conveyed. Such suits, insofar as they seek damages for unauthorized possession of the land prior to 1966, would be subject to the statute of limitations due to run on April 1, 1980. Unfortunately, this action would appear to put us in the position of suing innocent purchasers of Indian lands and their grantees as a direct result of BIA misfeasance. Furthermore, the beneficiaries of such lawsuits may be difficult to identify since the BIA may no longer have adequate records of the heirs to former allotments. And even if they can be identified, in cases where heirship is quite fractionated (a reason, we presume, for not obtaining consents to the conveyance in the first place) the benefit to the heirs from such a suit may be minimal. Where Indian tribes now possess the land, we are in a flat conflict of interest as trustee, and where some federal agency claims title to the land, no lawsuit can be filed at all.

Another alternative is for the BIA to take administrative action to cancel the patents unlawfully issued. Any persons adversely affected by this action could then seek APA review. This is the tentative recommendation of the Field Solicitor, and it certainly would be a more efficient procedure than filing quiet title suits.

**Indian Reorganization Act As Currently Amended and Codified in Title 25 > Chapter 14 > Subchapter V > Sections 461 to 479**

**Sec. 461 - Allotment of land on Indian reservations**

On and after June 18, 1934, no land of any Indian reservation, created or set apart by treaty or agreement with the Indians, Act of Congress, Executive order, purchase, or otherwise, shall be allotted in severalty to any Indian

**Sec. 462 - Existing periods of trust and restrictions on alienation extended**

The existing periods of trust placed upon any Indian lands and any restriction on alienation thereof are extended and continued until otherwise directed by Congress

**Sec. 463 - Restoration of lands to tribal ownership**

**(a)** Protection of existing rights
The Secretary of the Interior, if he shall find it to be in the public interest, is authorized to restore to tribal ownership the remaining surplus lands of any Indian reservation heretofore opened, or authorized to be opened, to sale, or any other form of disposal by Presidential proclamation, or by any of the public-land laws of the United States: Provided, however, That valid rights or claims of any persons to any lands so withdrawn existing on the date of the withdrawal shall not be affected by this Act: Provided further, That this section shall not apply to lands within any reclamation project heretofore authorized in any Indian reservation.

**(b)** Papago Indians; permits for easements, etc.

**(1)** ,
**(2)** Repealed. May 27, 1955, ch. 106, Sec. 1, 69 Stat. 67.
**(3)** Water reservoirs, charcos, water holes, springs, wells, or any other form of water development by the United States or the Papago Indians shall not be used for mining purposes under the terms of this Act, except under permit from the Secretary of the Interior approved by the Papago Indian Council: Provided, That nothing herein shall be construed as interfering with or affecting the validity of the water rights of the Indians of this reservation: Provided further, That the appropriation of living water heretofore or hereafter affected, by the Papago Indians is recognized and validated subject to all the laws applicable thereto.
(4) Nothing herein contained shall restrict the granting or use of permits for easements or rights-of-way; or ingress or egress over the lands for all proper and lawful purposes.

**Sec. 464 - Transfer of restricted Indian lands or shares in assets of Indian tribes or corporations; exchange of lands**

Gabriel Bighorn Allotment 1610-A

Thomas A. Lozeau Jr.

Except as herein provided, no sale, devise, gift, exchange, or other transfer of restricted Indian lands or of shares in the assets of any Indian tribe or corporation organized hereunder, shall be made or approved: Provided, however, That such lands or interests may, with the approval of the Secretary of the Interior, be sold, devised, or otherwise transferred to the Indian tribe in which the lands or shares are located or from which the shares were derived or to a successor corporation; and in all instances such lands or interests shall descend or be devised, in accordance with the then existing laws of the State, or Federal laws where applicable, in which said lands are located or in which the subject matter of the corporation is located, to any member of such tribe or of such corporation or any heirs or lineal descendants of such member or, except as provided by the Indian Land Consolidation Act (25 U.S.C. 2201 et seq.), any other Indian person for whom the Secretary of the Interior determines that the United States may hold land in trust: Provided further, That the Secretary of the Interior may authorize voluntary exchanges of lands of equal value and the voluntary exchange of shares of equal value whenever such exchange, in his judgment, is expedient and beneficial for or compatible with the proper consolidation of Indian lands and for the benefit of cooperative organizations.

**Sec. 465 - Acquisition of lands, water rights or surface rights; appropriation; title to lands; tax exemption**

The Secretary of the Interior is authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land for Indians.

For the acquisition of such lands, interests in lands, water rights, and surface rights, and for expenses incident to such acquisition, there is authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, a sum not to exceed $2,000,000 in any one fiscal year: Provided, That no part of such funds shall be used to acquire additional land outside of the exterior boundaries of the Navajo Indian Reservation for the Navajo Indians in Arizona, nor in New Mexico, in the event that legislation to define the exterior boundaries of the Navajo Indian Reservation in New Mexico, and for other purposes, or similar legislation, becomes law.

The unexpended balances of any appropriations made pursuant to this section shall remain available until expended.

Title to any lands or rights acquired pursuant to this Act or the Act of July 28, 1955 (69 Stat. 392), as amended (25 U.S.C. 608 et seq.) shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation.

**Sec. 466 - Indian forestry units; rules and regulations**

the disadvantage to this option is that it provides no means of seeking trespass damages for pre-1966 unlawful possession. Hence, this option is available both before and after April 1, 1980.

A third option is to seek legislation which would resolve this very sticky problem. Of course, to so state begs the question of what the legislation might provide for. One solution--and there may be many--would be to ratify all transfers of allotments which resulted from such BIA error, and then to provide for an administrative claims procedure under which the former beneficial owners of the allotments could seek remuneration from the United States for the fair market value of their interest in the property at the time of the transaction, plus 6% simple interest since the date of the transaction, minus any consideration which the Indian owner may have actually received at the time of the transaction. Perhaps we could limit such claims to persons who did not consent to the transactions as required by the 1948 Act. Indeed, the transfer of the undivided interests of consenting owners may have been entirely valid, notwithstanding the fact that other owners of the same allotment may not have consented. Such legislation might also provide that the BIA has an affirmative duty to seek out all such beneficial owners and provide them with notice of such a claims procedure.

An obvious disadvantage to this solution is that it will cost the United States Government some fair amount of money. The actual amount for which the U.S. might be liable cannot yet be determined because we do not know how extensive this unauthorized administrative practice was outside of the Minneapolis Area. We are trying to get that information at this time. See attached memorandum of February 16, 1979.

We may also be criticized for proposing such a solution because we are seeking only money rather than land for the beneficial Indian owners, and this is contrary to our general policy of trying to provide some more permanent benefits to our Indian wards. The question might also be raised why we have not endorsed such a ratification procedure in the case of the eastern Indian land claims. The difference between the eastern claims and this problem is a significant one, however, In the case of the eastern claims there was no actual misfeasance or fault on the part of the United States except that Congress and the executive branch as a whole appeared to have disregarded Indian land transactions on the east coast. In contrast, this problem involves affirmative administrative action taken without sufficient statutory authority therefor.

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Also, in many of these cases the Indian people have not been asserting these claims on their own. Rather, we have discovered the clouds on the titles to these lands as a result of our search of BIA files as part of our general statute of limitations effort. Perhaps most of the beneficial owners of these allotments would be satisfied with cash remuneration since they are not now seeking a return of those lands or the lands of their ancestors. On the other hand, in some areas Indian claimants appear to be organizing to assert claims to the land itself. At any rate, any legislative solution will undoubtedly be both expensive and controversial.

We look forward to your guidance on this most difficult problem.

Thomas W. Fredericks

Thomas W. Fredericks

Attachment

RECEIVED
MAR 19 1923
22566

# W I L L.

IN THE NAME OF GOD, AMEN:

BE IT REMEMBERED THAT I, Isabel Tsoose, Flathead Allottee No. 1608, now a resident of the Flathead Indian Reservation, in the County of Missoula, State of Montana, of the age of about 69 years, being of a sound and disposing mind and memory, and not acting under duress, fraud, or under the influence of any person whatsoever, do make, publish and declare this to be my last will and testament, in the following manner, that is to say:

To Therese Lillacelle Lozeau I bequeath one-half of the allotment of Gabriel Bighorn, No. 1610, described as the SE¼ of the NW¼ of Sec. 7, Twn. 16 N., R. 19 W., to which I have been declared the sole heir.

To my beloved brother, Mathew Whitfield of Lapwai, Idaho, I bequeath the following property:

All of my allotment, No. 1608, described as the NW¼ of the SW¼ & SW¼ of the NW¼ Sec. 7, Twn. 16 N., R. 19 W., containing 80 acres.

One-half of the allotment of Gabriel Bighorn, No. 1610, described as the SW¼ of the NE¼ Sec. 7, Twn. 16 N., R. 19 W., containing 40 acres, to which I have been declared the sole heir.

All my one-half interest in the allotment of my deceased husband, Pierre Tsoose, No. 1607, described as the N½ of the SW¼ of Sec. 14, Twn. 16 N., R. 20 W., containing 80 acres.

All of my interest in the estate of my deceased brother, Arthur Paul (Whitfield), a deceased Nez Perce Indian, whose allotment is on the Nez Perce Reservation, Idaho, the description of which I do not know, and to which I have been declared an heir.

All personal property of every description, funds to my credit, horses, cattle, clothing, etc., I will to the said Mathew Whitefield. And I hereby revoke all former wills made.

In consideration of the above the beneficiaries under this will are to pay my debts, if any, and to provide for and pay for my funeral expenses.

IN WITNESS WHEREOF, I have set my hand and seal this 3d day of March, in the year of our Lord One Thousand Nine Hundred Twenty-three.

her
* Isabel Tsoose

Witnesses:

Both of Dixon, Montana.

The foregoing instrument, consisting of this one page, was at the date thereof, signed, sealed, published and declared by the said Isabel Tsoose, to be her last will and testament, in the presence of each of us, who, at her request, and in the presence of each other, have and in her presence, have subscribed our names as witnesses hereto.

Dixon, Montana.

Dixon, Montana.

Probate

M C M

5-107 Sheet 1

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS
FIELD SERVICE
Missoula, Montana

February 19, 1946

## SUMMARY OF REPORT ON HEIRS

Estate of Edward Lozeau, deceased Flathead

Allottee No. 746, died February 25, 1945, aged 74, hearing held May 22, 1945

at Flathead Agency, Dixon, Montana.

Heirs, at the date of hearing, in accordance with the laws of the State of Montana and Washington

| Heir | Relationship | Share |
|---|---|---|
| Alexander Lozeau, Al. #2891 | Son | 1/5 |
| Mary Louise Lozeau Pierre, Al. #2893 | Daughter | 1/5 |
| Thomas Alfred Lozeau, Al. #2894 | Son | 1/5 |
| Theresa May Lozeau Mahseelah, Unal. | Daughter | 1/5 |
| Louella Joan Courville, Unal. | Granddaughter | 1/5 |

* If more space is necessary to give names of heirs, affix a separate sheet at this point.

RECEIVED MAR 11 1946 10132 OFFICE OF INDIAN AFFAIRS

The trust or restricted estate of the decedent consists of:

| | |
|---|---|
| Original allotment, appraised at fee patented | $ — |
| Inherited lands, state of Washington, appraised at | 583.33 |
| Inherited lands, appraised at | 906.66 |
| Cash, securities, or other personal restricted estate appraised at | 38.65 |
| TOTAL | 1528.64 |

No dower, curtesy, or homestead rights involved.

Merle C. Martin Examiner of Inheritance.

Verified ....., 19.....

By .....
Chief, Probate Division.

[OVER]

S-107-c

Probate
1013 2-46
M C K

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF [redacted] Indian Affairs
[redacted]
Chicago

# ORDER DETERMINING HEIRS

WHEREAS, Edward Lozeau, Allottee No. 746 of the Flathead Indian Agency in the State of Montana died intestate on the 25th day of February, 1945, at the age of 74 years, and

WHEREAS, a hearing was duly held at the Flathead Agency, Dixon, Montana on the 22nd day of May, 1945, for the purpose of ascertaining the heirs of said decedent:

NOW, THEREFORE, by virtue of the power and authority vested in the Secretary of the Interior by section 1 of the act of June 25, 1910 (36 Stat. L., 855), and other applicable statutes,* I hereby find, adjudge, and declare that at the date of the above-mentioned hearing the heirs of said decedent, determined in accordance with the laws of the States of Montana and Washington and their respective shares in his estate were:

| | | |
|---|---|---|
| Alexander Lozeau, Al. #2891 | Son | 1/5 |
| Mary Louise Lozeau Pierre, Al. #2893 | Daughter | 1/5 |
| Thomas Alfred Lozeau, Al. #2894 | Son | 1/5 |
| Theresa May Lozeau Mahseelah, Unal. | Daughter | 1/5 |
| Louella Joan Courville, Unal. | Granddaughter | 1/5 |

The following claims are hereby allowed and are to be paid from funds now held or hereafter accruing, in the following order:

1. $ 25.00 - probate fee.
2. $1028.64 - Dept. of Public Welfare, State of Montana, Helena, Montana, covering old age assistance grants.
3. $ 48.22 - Mrs. L. H. Jeannot, 1910 Grove St., San Francisco, Calif., covering groceries and supplies sold to decedent.
   $ 17.90 - Jacobs & Jacobs, Perma, Mont., covering groceries and supplies sold to decedent.
   $ 2.80 - Lozar Merc. Co., Dixon, Mont., covering merchandise sold to decedent.

*and pursuant to Departmental regulations of December 17, 1943, delegating probate authority to the Commissioner of Indian Affairs.

The estate of said decedent subject to the jurisdiction of this Department having been appraised at $ 1528.64, a fee of $ 25.00 will be collected by the Superintendent or other officer in charge, pursuant to authority found in the act of January 24, 1923 (42 Stat. L., 1185).

Done at the city of [redacted], Chicago, Illinois, and dated APR 24 1946, 19__

APR 29 1946

Copy to Superintendent Head, Colville
G. A. O. & Examiner Wright, Flathead

A. M. Meyers
[redacted]
Acting Commissioner.

HEIRSHIP BREAKDOWN

ALLOTMENT 1608, Isabel Towsee, dec.
Probate [illegible]; Nez Perc, 26906-33
SW¼NW¼ & NW¼SW¼, Sec. 7, Twp. 16 N.,R.19 W.,80 acres

By Device:

| | | |
|---|---|---|
| Lucy Whitfield, dec. | 1/2 | $515.00 |
| Melinda Whitfield | 1/4 | 257.50 |
| Effie Whitfield | 1/4 | 257.50 |
| Total appraised valuation | | 1030.00 |

ALLOTMENT 1610, Gabrielle Bighorn, dec.
Probate 138086-13; 22566-29; NezPerc 26906-33;
SE¼NW¼ & SW¼NE¼, Sec. 7, Twp. 16 N.,R.19 W., 80 acres

By device:

No. 747, Therese L. Lozeau, dec., SE¼NW¼, 7-16-19; 40 acres
Probate 41347-29; 17454-33; 259-39;10132-46;28377-46;

| | | | |
|---|---|---|---|
| 746, Edward Lozeau, dec., to cnt. claims | | 4/9 | $226.64 |
| 2301, Alexander Lozeau | | 1/9 | 56.67 |
| 2304, Thomas A. Lozeau | | 1/9 | 56.67 |
| Unal. Therese M. Lozeau | | 1/9 | 56.67 |
| " Louella Joan Courville | (m) | 1/18 | 28.33 |
| " George Elmer Mitchell | (m) | 1/18 | 28.33 |
| " Ina Lee Matt | (m) | 1/18 | 28.34 |
| " Alice Marie Matt | (m) | 1/18 | 28.34 |
| | | | $510.00 |

Owns No Share as of April 26, 1946

Owns 1/5 Share

Device 747 is wrong. Results in 1/4 Share not 1/5. — Using Device 746 is correct. Results 1/5 Share

Edwards Probate 04-26-46

By device: SW¼NE¼, Sec. 7, T.16 N., R. 19 W. 40 acres

| | | | |
|---|---|---|---|
| Lucy Whitfield, dec. | (Nez Perc) | 1/2 | $255.00 |
| Melinda Whitfield | (NezPe c) | 1/4 | 127.50 |
| Effie Whitfield | (Nez Perc) | 1/4 | 127.50 |
| | | | $510.00 |
| Total appraised valuation | | | $1020.00 |

Probate of Lucy Whitfield,dec.
Nez Perc allottee. Nos. 5754-43; 9258-45;
Susie White, sole heir.

4

Standard Form No. 1017 - Revised
Treasury Department
Form prescribed by Comptr. Gen. U. S.

# JOURNAL VOUCHER

J. V. No. [illegible]

P. Ha Haverland, S. B. Asst. Billings Area Office, [illegible]

Date [illegible]

| REFERENCE | EXPLANATION | DEBIT | CREDIT |
|---|---|---|---|
| | 66.80 INDIVIDUAL INDIAN ACCOUNTS | | |
| | Individual Indian Accounts | | |
| | Individual Indian Accounts | $3050.00 | |
| | Transfer of Funds from K-32 (Loan Acc't) Clara Keenan Donnelly for purchase of land: TO THE FOLLOWING: | | 3050.00 |
| | Hemp - 25 Land Sale Fee - IHA | | |
| C-64 | Susie White (Has Purse) ($10.00) | $804.75 | |
| C-63 | Melinda Whitfield ( " ) ( 5.15) | 552.63 | |
| C-62 | Effie Whitfield ( " ) ( 5.15) | 552.62 | |
| | $30.00 Total land sale fees. | | |
| | Total land sale $3050.00 | | |
| | Allotment 1603, Deed approved Billings Area Director Paul L. Fickinger 5-1-58; Recorded Billings Area No. 8, Vol. 75; [illegible] File No. 1603, Page 25, 27, 28 | | |
| | Allot. 1619, Gabrielle Higbeam, Dec. Prob. [illegible] Montana [illegible], Sec. 7, Twp. 16 N., R.19 W., 80 acres | | |
| | By Devises: | | |
| | No. 949 Thomas L. Lessam, Deal.[illegible], 7-14-58; 40 acres. Prob. 41847-58. [illegible] | | |
| L-61 | Edward Lessam, Less. Est.Claims $[illegible].11 | | |
| L-57 | Alexander Lessam | | |
| L-61 | Thomas A. Lessam | 86.56 | |
| [illegible] | Lorraine M. Lessam | [illegible] | |
| C-129 | Lucille Jean Courville | [illegible] | |
| M-[illegible] | George Edward Mitchell | [illegible] | |
| M-[illegible] | Ina Lee Matt - Peter A Auld | [illegible] | |
| M-[illegible] | Alice Marie Matt - Vincent Curley | [illegible] | |

* Edward is Proper Device

* My father

DATE: 11/23/2009
TIME: 12:58:47 CST

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
TITLE STATUS REPORT
TITLE INTERESTS HELD IN FEE OR TRUST


REQUESTOR: GDUCHARM

--------TRACT ID--------

| LAND AREA | PFX | NUMBER | SFX | TITLE PLANT | LAND AREA NAME | RESOURCES | -------DATE OF LAST------- CERTIFICATION/VERIFICATION |
|---|---|---|---|---|---|---|---|
| 203 | T | 1610 | -A | PORTLAND | FLATHEAD | Surface | 9/12/1995 |

GABRIEL BIGHORN
*** TRACT NAME ***

| SEC | TOWNSHIP | RANGE | STATE | COUNTY | MERIDIAN | LEGAL DESCRIPTION | ACRES | CUMULATIVE ACRES | LAND DESCRIPTION NOTES REMARK OR EXPLANATION |
|---|---|---|---|---|---|---|---|---|---|
| 7 | 016.00N | 019.00W | MONTANA | LAKE | Principal | SE NW | 40.000 | 40.000 | |
| | | | | | | TOTAL SECTION ACRES: | 40.000 | 40.000 | |

| -------- OWNER -------- TRB | NUM/DOB | TYP | OT | INT | CLS | --- DOCUMENT --- TYP | NUMBER | NAME IN WHICH ACQUIRED SURNAME / FIRST NAME | FRACTION TRACT AS ACQUIRED | AGGREGATE SHARE CONVERTED TO LCD | AGGREGATE DECIMAL |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 203 | T203-30 | T | T | A | 10 | | 23269 | FLATHEAD TRIBES | 1 | 1 | |
| | | | | | | | | | 1 | 1 | 1.0000000000 |

Document 203 23269 is Deed To Restricted Indian Land dated November 9, 1984, Gabriel Bighorn Allotment 1610-A and 1610-B

Tribal Resolution No. 85-28 is dated November 9, 1984

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NOV 23 2009
TRIBAL LANDS DEPARTMENT

| | | |
|---|---|---|
| IN TRUST: | 1 | |
| | 1 | 1.0000000000 |
| IN FEE: | 0 | |
| | 1 | .0000000000 |
| TOTAL: | 1 | |
| | 1 | 1.0000000000 |

TITLE IS SUBJECT TO THE FOLLOWING ENCUMBRANCES AND NOTES:

NO TRACT NOTES FOUND

| CONTRACT TYPE/ CONTRACTOR NAME | CONTRACT NUMBER | CONTRACTOR | BEGINNING DATE | EXPIRATION DATE | LEASED ACRES | RECORDED IMAGE # | RECORDING REMARKS |
|---|---|---|---|---|---|---|---|
| Telephone/Telegraph BLACKFOOT TELEPHONE COOPERATIVE INC. | 8R16217727 | 203C002111 | 3/15/1977 | 03/14/2027 | .110 | 203 20167 | |

| --------TRACT ID-------- LAND AREA | PFX | NUMBER | SFX | TITLE PLANT | LAND AREA NAME | RESOURCES | * -------DATE OF LAST------- CERTIFICATION/VERIFICATION |
|---|---|---|---|---|---|---|---|
| 203 | T | * 1610 | -A | PORTLAND | FLATHEAD | Surface | 9/12/1995 |

| NATURE OF ENCUMBRANCE | ENCUMBRANCE HOLDER | EXPIRATION DATE | DOCUMENT CLS | DOCUMENT TYP | DOCUMENT NUMBER | DESCRIPTION / EXPLANATION * |
|---|---|---|---|---|---|---|
| MISCELLANEOUS | ----- | PERPETUAL | 08 | | * 803 | ORDER TRANS INHERITED INTMAY NOT BE IN ACCORDANCE WITH ACT 5-14-48 (62 STAT236) AS INTERPRETED BY SOLICITOR'S OPINION OF 6-24-55, ACT 6-25-10 (36 STAT 855) * INAPPLICABLE BY1948 ACT REQUIRING CON- SENT OF ALL INDIAN OWNERSON I.R.A. RESERVATIONS. |
| MISCELLANEOUS | 203-U5141 | PERPETUAL | 10 | | 23269 | SURFACE ONLY |

1. * Is Act of 06-25-10 * Inapplicable By Act of 05-14-48?
Yes. No.

2. * Does Section 4 of the Indian Reorganation Act 25 U.S.C. Chapter 14 Section 464 *VOID
* Act of 06-25-10? Yes. No.

3. Does Encumbrance 803 on 1610-A VOID Tribal Resolution 85-28 203 23325 Warranty Deed requires Land to be Exchanged for Tribal Tract 1375," that the same is free from all Encumbrances"? Yes. NO.

SALES, EXCHANGES AND CONVEYANCES OF TRUST OR RESTRICTED LANDS

### § 152.17 Sales, exchanges, and conveyances by, or with the consent of the individual Indian owner.

Pursuant to the Acts of May 27, 1902 (32 Stat. 275; 25 U.S.C. 379); May 17, 1906 (34 Stat. 197), as amended August 2, 1956 (70 Stat. 954; 48 U.S.C. 357); March 1, 1907 (34 Stat. 1018; 25 U.S.C. 405); May 29, 1908 (35 Stat. 444; 25 U.S.C. 404); June 25, 1910 (36 Stat. 855; 25 U.S.C. 372), as amended May 25, 1926 (44 Stat. 629; 48 U.S.C. 355a-355d); June 18, 1934 (48 Stat. 984; 25 U.S.C. 464); and May 14, 1948 (62 Stat. 236; 25 U.S.C. 483); and pursuant to other authorizing acts, trust or restricted lands acquired by allotment, devise, inheritance, purchase, exchange, or gift may be sold, exchanged, and conveyed by the Indian owner with the approval of the Secretary or by the Secretary with the consent of the Indian owner.

### § 152.18 Sale with the consent of natural guardian or person designated by the Secretary.

Pursuant to the Act of May 29, 1908 (35 Stat. 444; 25 U.S.C. 404), the Secretary may, with the consent of the natural guardian of a minor, sell trust or restricted land belonging to such minor; and the Secretary may, with the consent of a person designated by him, sell trust or restricted land belonging to Indians who are minor orphans without a natural guardian, and Indians who are non compos mentis or otherwise under legal disability. The authority contained in this act is not applicable to lands in Oklahoma, Minnesota, and South Dakota, nor to lands authorized to be sold by the Act of May 14, 1948 (62 Stat. 236; 25 U.S.C. 483).

### § 152.19 Sale by fiduciaries.

Guardians, conservators, or other fiduciaries appointed by State courts, or by tribal courts operating under approved constitutions or law and order codes, may, upon order of the court, convey with the approval of the Secretary or consent to the conveyance by the Secretary of trust or restricted land belonging to their Indian wards who are minors, non compos mentis or otherwise under legal disability. This section is subject to the exceptions contained in 25 U.S.C. 954(b).

### § 152.20 Sale by Secretary of certain land in multiple ownership.

Pursuant to the Act of June 25, 1910 (36 Stat. 855), as amended (25 U.S.C. 372), if the Secretary decides that one or more of the heirs who have inherited trust land are incapable of managing their own affairs, he may sell any or all interests in that land. This authority is not applicable to lands authorized to be sold by the Act of May 14, 1948 (62 Stat. 236; 25 U.S.C. 483).

### § 152.21 Sale or exchange of tribal land.

Certain tribal land may be sold or exchanged pursuant to the Acts of February 14, 1920 (41 Stat. 415; 25 U.S.C. 294); June 18, 1934 (48 Stat. 984; 25 U.S.C. 464); August 10, 1939 (53 Stat. 1351; 25 U.S.C. 463(e)); July 1, 1948 (62 Stat. 1214); June 4, 1953 (67 Stat. 41; 25 U.S.C. 293(a)); July 28, 1955 (69 Stat. 392), as amended August 31, 1964 (78 Stat. 747; 25 U.S.C. 608-608c); June 18, 1956 (70 Stat. 290; 25 U.S.C. 403a-2); July 24, 1956 (70 Stat. 626); May 19, 1958 (72 Stat. 121; 25 U.S.C. 463, Note); September 2, 1958 (72 Stat. 1762); April 4, 1960 (74 Stat. 13); April 29, 1960 (74 Stat. 85); December 11, 1963 (77 Stat. 349); August 11, 1964 (78 Stat. 389), and pursuant to other authorizing acts. Except as otherwise provided by law, and as far as practicable, the regulations in this part 152 shall be applicable to sale or exchanges of such tribal land.

### § 152.22 Secretarial approval necessary to convey individual-owned trust or restricted lands or land owned by a tribe.

(a) *Individual lands.* Trust or restricted lands, except inherited lands of the Five Civilized Tribes, or any interest therein, may not be conveyed without the approval of the Secretary. Moreover, inducing an Indian to execute an instrument purporting to convey any trust land or interest therein, or the offering of any such instrument for record, is prohibited and criminal penalties may be incurred. (See 25 U.S.C. 202 and 348.)

(b) *Tribal lands.* Lands held in trust by the United States for an Indian

No written documentation to support ~~incap~~ incompetency.



June 25, 1910. [H. R. 18978.]
[Public, No. 290.] 36 Stat., 837.

CHAP. 408.—An act to authorize the Secretary of the Interior to issue a patent to the city of Anadarko, State of Oklahoma, for a tract of land, and for other purposes.

Oklahoma eastern district. Appeals to court of appeals in allotment cases.

SEC. 3. That an appeal to the Supreme Court of the United States in all suits affecting the allotted lands within the eastern district of Oklahoma or on demurrers in such suits appealed to the United States circuit court of appeals, eighth circuit, is hereby authorized to be made by any of the parties thereto, including appeals from orders reversing judgments of the trial court.[1]

Approved, June 25, 1910.

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June 25, 1910. [H. R. 24992.]
[Public, No. 313.] 36 Stat., 855.

CHAP. 431.—An act to provide for determining the heirs of deceased Indians, for the disposition and sale of allotments of deceased Indians, for the leasing of allotments, and for other purposes.

Indian trust allotments. Disposal to heirs of intestate Indians.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That when any Indian to whom an allotment of land has been made, or may hereafter be made, dies before the expiration of the trust period and before the issuance of a fee simple patent, without having made a will disposing of said allotment as hereinafter provided, the Secretary of the Interior, upon notice and hearing, under such rules as he may prescribe, shall ascertain the legal heirs of such decedent, and his decision thereon shall be final and conclusive.[2] If the Secretary of the Interior decides the heir or heirs of such decedent competent to manage their own affairs, he shall issue to such heir or heirs a patent in fee for the allotment of such decedent; if he shall decide one or more of the heirs to be incompetent, he may, in his discretion, cause such lands to be sold: *Provided*, That if the Secretary of the Interior shall find that the lands of the decedent are capable of partition to the advantage of the heirs, he may cause the shares of such as are competent, upon their petition, to be set aside and patents in fee to be issued to them therefor. All sales of lands allotted to Indians authorized by this or any other act shall be made under such rules and regulations and upon such terms as the Secretary of the Interior may prescribe, and he shall require a deposit of ten per centum of the purchase price at the time of the sale. Should the purchaser fail to comply with the terms of sale prescribed by the Secretary of the Interior, the amount so paid shall be forfeited; in case the balance of the purchase price is to be paid in deferred payments, a further amount, not exceeding fifteen per centum of the purchase price, may be so forfeited for failure to comply with the terms of the sale. All forfeitures shall inure to the benefit of the heirs. Upon payment of the purchase price in full, the Secretary of the Interior shall cause to be issued to the purchaser patent in fee for such land: *Provided*, That the proceeds of the sale of inherited lands shall be paid to such heir or heirs as may be competent and held in trust subject to use and expenditure during the trust period for such heir or heirs as may be incompetent, as their respective interests shall appear: *Provided further*, That the Secretary of the Interior is hereby authorized in his discretion to issue a certificate of competency, upon application therefor, to any Indian, or in case of his death, to his heirs, to whom a patent in fee containing restrictions on alienation has been or may hereafter be issued, and such certificate shall have the effect of removing the restrictions on alienation contained in such patent: *Provided further*, That hereafter any United States Indian agent, superintendent, or other disbursing agent of the Indian Service may deposit Indian moneys, individual or tribal, coming into his hands as custodian, in such bank or banks as he may

Discretion of Secretary of Interior. 36 Stat., 856.

Provisos. Partition.

Rules for sales, etc.

Issue of patents in fee.

Distribution of proceeds.

Competency certificates.

Deposit of Indian funds in banks.

[1] Mullen *v.* U. S., 224 U. S. 448; Deming Investment Co. *v.* U. S., 224 U. S., 471.
[2] Parr *v.* Colfax, 197 Fed. 302; Pel-ato-yakot *v.* U. S., 188 Fed. 387; Bond *v.* U. S., 181 Fed. 613. Heirs of Grace Cox, decision of Secretary of the Interior Sept. 16, 1913, 42 L. D., 493; Little Chief, 40 L. D., 102; Crow Eagle, 40 L. D., 120; Moses Agreement, 40 L. D., 212.

Act of May 14, 1948



[CHAPTER 293]

AN ACT

May 14, 1948
[H. R. 5262]
[Public Law 529]

To authorize the sale of individual Indian lands acquired under the Act of June 18, 1934, and under the Act of June 26, 1936.

Sale of Indian lands.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of the Interior, or his duly authorized representative, is hereby authorized in his discretion, and upon application of the Indian owners, to issue patents in fee, to remove restrictions against alienation, and to approve conveyances, with respect to lands or interests in lands held by individual Indians under the provisions of the Act of June 18, 1934 (48 Stat. 984), or the Act of June 26, 1936 (49 Stat. 1967).

25 U. S. C. §§ 461–479, 501–509; Supp. I, § 502.
*Post*, p. 991.

Approved May 14, 1948.

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[CHAPTER 298]

AN ACT

May 18, 1948
[H. R. 1189]
[Public Law 530]

To establish the methods of advancement for post-office employees (rural carriers) in the field service.

Seniority Act for Rural Mail Carriers.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the seniority status of a rural mail carrier shall be based upon the regulations of the Post Office Department which provide that seniority shall commence on the day of appointment as a regular rural carrier. In case of voluntary transfer from one post office to another, or from any branch of the service into the rural service, the relative seniority of the transferee shall be determined by the date of entrance into the rural service of the office to which transfer is made.

Original appointments.

SEC. 2. All rural carriers, upon entering the service, shall be assigned to the least desirable route and shall rise to the more desirable routes by seniority only.

Promotions.

SEC. 3. The awarding of promotions and preferential assignments shall be based upon seniority and ability; if ability be sufficient, seniority shall govern.

New route or vacancy.

SEC. 4. Each new route or vacancy shall be bulletined and all rural carriers attached to the office shall be given a chance to apply. The senior rural carrier who applies shall be assigned thereto as provided in section 3.

Inability to fill assignment.

SEC. 5. Rural carriers awarded these assignments shall have ninety days in which to demonstrate their fitness for the route and shall not be removed therefrom until their inability to fill the assignment has been proven. In case of their inability to fill the new assignment they shall be returned to their former position. Such rural carrier shall be allowed the right of appeal as stated in section 6.

Hearing.

SEC. 6. (a) A senior rural carrier who makes application for a new or vacant route, whose application has been denied, or who has been declared incompetent for same, shall have the right, upon written request, to a hearing before a post-office inspector, on his case, and shall be furnished a statement in writing of the reasons for his rejection by official responsible for same.

(b) This hearing shall occur, except under unusual conditions preventing same, within ten days from the date of his request. In case of a postponement, the rural carrier affected shall be given a written statement of the reason for the postponement.

(c) The rural carrier shall have the right to be represented at the hearing by not more than three representatives of his own choosing.

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ENCUMBRANCE 203 803

Allot. No. 1610

# Order Transferring Inherited Interests in Indian Land To An Indian

WHEREAS, under authority of the allotment act of February 8, 1887 (as amended), the land described below was duly allotted to Gabrielle Bighorn, deceased allotee No. 1610 of the Flathead Indian Reservation, Montana, for which trust patent was issued October 8, 1908, and,

WHEREAS, the said land is now held in trust by the heirs of the said allotee, and,

WHEREAS, section 1 of the* act of June 25, 1910 (36 Stat. 855) provides the Secretary of the Interior with the exclusive authority to determine the heirs of deceased Indians, and also authorizes the Secretary, in his discretion, to cause the lands allotted to deceased Indians to be sold if he shall decided one or more of the heirs to be incompetent, and,

WHEREAS, authority has been delegated by the Secretary of the Interior to the Commissioner of Indian Affairs and to the Area Directors under the act of August 8, 1946 (Pub. 687, 79th Cong.), and,

WHEREAS, the said Gabrielle Bighorn died on or about July 24, 1905, since which date the heirs of the said allottee have been duly determined pursuant to the authority hereinbefore cited, four of whom are minors and _____ are incompetent, and,

BUREAU OF INDIAN AFFAIRS RECEIVED SEP 11 1950

* The Act of May 14, 1948 as cited in 25 C.F.R. 152.17 Sales, exchanges, and conveyances by, or with the consent of the individual Indian Owner. 152.20, 152.22 support this.

According to Indian Affairs Manual, Vol. V Resources Part IV Land. Termination of Restrictions ON AND Conveyances of Indian Land, Section 2.1 Patents in Fee, Certificates of Competency, and Removal of Restrictions, .2 Factor to be considered.

No written documentation to support Section 1 of Act of June 25, 1910 thus it fails.

203 803 Allot. NO. 1610 Order Transferring Inherited Interests in Indian Land To An Indian is in fact "Null And Void Ab Initio."

* 25 CFR Chapter I
*Sub Chapter H - Land and Water
*Part 152 152.20 *

* Encumbrance
203 (803)

Allot. No. 1610

# Order Transferring Inherited Interests in Indian Land To An Indian

* Act of 5-14-48 Belongs *

WHEREAS, under authority of the allotment act of February 8, 1887 (as amended), the land described below was duly allotted to Gabriella Bighorn, deceased allotee No. 1610 of the Flathead Indian Reservation, Montana, for which trust patent was issued October 8, 1908, and,

WHEREAS, the said land is now held in trust by the heirs of the said allotee, and,

WHEREAS, section 1 of the act of June 25, 1910 (36 Stat. 855) provides the Secretary of the Interior with the exclusive authority to determine the heirs of deceased Indians, and also authorizes the Secretary, in his discretion, to cause the lands allotted to deceased Indians to be sold if he shall decided one or more of the heirs to be incompetent, and, *

WHEREAS, authority has been delegated by the Secretary of the Interior to the Commissioner of Indian Affairs and to the ~~Regional~~ Area Directors under the act of August 8, 1946 (Pub. 687, 79th Cong.), and,

WHEREAS, the said Gabriella Bighorn died on or about July 24, 1905, since which date the heirs of the said allottee have been duly determined pursuant to the authority hereinbefore cited, four of whom are minors and ____ are incompetent, and,

RECEIVED
BUREAU OF INDIAN AFFAIRS
SEP 11 1950
18255
Washington, D.C.

WHEREAS, Clara Keenan Dumontier, #2835, an Indian of the Confederated Salish and Kootenai Tribes, has requested the ~~Regional~~ Area Director to purchase the land, title to which will be taken in the name of THE UNITED STATES OF AMERICA IN TRUST FOR Clara Keenan Dumontier, Flathead allottee No. 2835 pursuant to the act of June 18, 1934 (48 Stat. 984), and has deposited with the superintendent $ 510.00 of the purchase price or has made other satisfactory arrangement guaranteeing the payment of the consideration as follows: Approved Tribal Revolving Credit Fund Loan CF No. 467

, and,

WHEREAS, deeming it to be for the best interests of the heirs of the above-named deceased Indian allottee, and the Indians of the said Indian reservation, that the land herein described be reacquired for the said Indian, and having previously caused said land to be appraised by a competent appraiser or appraisers who have fixed the value of the same at the sum of Five Hundred Ten and No/100 ($ 510.00) which sum the officer in charge of the above-mentioned reservation, pursuant to authority heretofore granted him, has deposited to the credit of the estate of the said deceased allottee for distribution, upon issuance of this order, to the heirs of said estate, according to their respective interests therein as heretofore found and determined by this Department,

NOW, THEREFORE, by virtue of the authority conferred upon the ~~Regional~~ Area Director by the statutes hereinabove referred to, and other applicable provisions of law and by Departmental and Indian Office orders, I hereby declare that all right, title, interest, claim or demand of any nature whatsoever of the heirs of the above-named allottee in and to the lands described as follows to-wit:

[illegible], Section 7, Twp. 16 N., R. 19 W., M. M., containing 40 acres, more or less;

together with all improvements thereon and appurtenances thereunto belonging is hereby transferred to THE UNITED STATES OF AMERICA IN TRUST FOR Clara Keenan Dumontier, Flathead allottee No. 2835 for use and disposition as other trust allotments on the said reservation. This conveyance so made is subject to all valid existing rights-of-way and liens for repayment of irrigation charges and to reservations in the trust patent, if any.

Done at Billings, Montana, and dated _____

(Sgd) Paul L. Hoffman

* Section 4 of the IRA 25 U.S.C. 464 Prohibits the approval of any conveyance or transfer of restricted Indian Lands.

## TERMINATION OF RESTRICTIONS ON AND CONVEYANCES OF INDIAN LAND

Section 2.1 Patents in Fee, Certificates of Competency, and Removal of Restrictions

.1 Policy
.2 Factor to be Considered
.3 Patents in Fee
.4 Patents in Fee to Lands of Adult Mixed-blood Indians within the White Earth Reservation, Minnesota
.5 Certificates of Competency
.6 Removal of Restrictions on Purchased Lands

Section 2.2 Sale of Allotted and Purchased Lands, Exclusive of Five Civilized Tribe Allotted Lands

.1 Policy
.2 Authority
.3 Procedure

Section 2.3 Partitions of Inherited Allotments (Except as to Osage and Five Civilized Tribes)

.1 Authority
.2 General Policy
.3 Procedure

Section 2.4 Removal of Restrictions and Sales of Five Civilized Tribes Allotted Lands and Purchased Lands Held Under Carney-Lacher Form Deeds

.1 Policy
.2 Authority
.3 Determination of Competency and Factors to be Considered before Approving Applications
.4 Procedures
.5 Procedures for Sales after Issuance of Conditional Orders Removing Restrictions

Section 2.5 Recording of Approved Mortgages on Trust Land

.1 Purpose
.2 Procedure

## 2 TERMINATION OF RESTRICTIONS ON AND CONVEYANCES OF INDIAN LAND INCLUDING EXCHANGES AND PARTITIONS

### 2.1 Patents in Fee, Certificates of Competency, and Removal of Restrictions.

.1 Policy. Patents in fee, certificates of competency, and orders removing restrictions may be issued upon the written application of adult Indian owners. If the Indian owner is competent to manage the property for which he requests a patent, certificate, or order, the Government has no moral or equitable right to deny his application.

If the Superintendent upon investigation finds the applicant to be competent but finds that the land covered by the application is a key tract and the termination of the trust status may adversely affect the protection and use of Indian lands remaining in trust status, the Superintendent will investigate the specific effect of the alienation on the surrounding trust lands, inform the tribal officials or individual Indians of the possibilities available for working out a satisfactory solution to the problem, and assist in negotiations or other action necessary to the solution. For example, this may in some cases be simply a matter of negotiating for a stock right of way, or a right of way for access purposes, or for the construction, maintenance, and use of a logging road to remove timber. Should the tract control the source of livestock water for a grazing unit, it may be possible to acquire a stock watering permit, or it may be a matter of developing other sources of water on another part of the range. Should it be found that acquisition of the tract by the tribe or an individual Indian is the only feasible means of protecting other Indian trust lands, the Superintendent will discuss the matter with the interested parties.

If the tribe or an individual Indian wishes to acquire the land, the Superintendent will assist in negotiating with the owner to acquire the land by purchase or exchange. If negotiations fail due to the refusal of the owner to negotiate a conveyance of the land to the tribe or an Indian, or there is a lack of available funds to consummate the acquisition, the application and all accompanying papers should be submitted by the Superintendent, with his recommendations on the matter, to the Area Director.

Except in unusual cases, patents in fee, certificates of competency, and orders removing restrictions will not be issued for undivided interests in lands held in multiple ownership where other interests in the tract remain in trust or restricted status, since such action would increase the work and expense involved in administering the interests remaining under Bureau jurisdiction. This policy, of course, does not apply to the issuance of fee patents to non-Indians or alien Indians pursuant to 25 CFR 151.6.

.2 Factors to be considered. General authority for the issuance of patents in fee simple is found in the Act of May 8, 1906 (34 Stat. 182; 25 U.S.C. sec. 349), from which the following is quoted:

> "PROVIDED, That the Secretary of the Interior may, in his discretion, and he is authorized, whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her affairs at any time to cause to be issued to such allottee a patent in fee simple, . . ."

The Act of June 25, 1910, Sec. 1 (36 Stat. 855; 25 U.S.C. 372), contains the following:

> "If the Secretary of the Interior decides the heir or heirs of such decedent competent to manage their own affairs, he shall issue to such heir or heirs a patent in fee for the allotment of such decedent; if he shall decide one or more of the heirs to be incompetent, he may, in his discretion, cause such lands to be sold."

Over the years a great deal of study has been given to this subject, and various approaches have been made to determinations of competency. The most recent effort on the part of Congress to establish a yardstick for measuring competency of individual Indians is found in the Act of August 11, 1955 (69 Stat. 666), relating to the removal of restrictions from property of members of the Five Civilized Tribes. Sec. 2(a) of this act provides that an order removing restrictions "shall be issued if in the

judgment of the Secretary the applicant has sufficient ability, knowledge, experience, and judgment to enable him, or her, to manage his, or her, business affairs, including the administration, use, investment, and disposition of any property turned over to such person and the income or proceeds therefrom, with such reasonable degree of prudence and wisdom as will be apt to prevent him, or her, from losing such property or the benefits thereof." The regulations issued pursuant to this act are contained in 25 CFR 152.

Precise rules cannot be prescribed for determining the competency and ability of an applicant to manage his or her own affairs. Such rules would tend to have the effect of restricting the exercise of judgment to an undesirable extent. Care must be exercised in evaluating the application for a fee patent or other action to lift the trust or remove restrictions, to the end that reasonable standards are applied in determining the applicant's competency. An applicant should not be required or expected to show in excess of the minimum acceptable normal standards in a similar non-Indian community relative to such criteria as education, experience, training, ability to support himself and his dependents, ability to protect and manage his property and make reasonable use of the income or proceeds thereof.

✳ The Superintendent's findings as to competency, based on analysis in line with the above principles, are to be reduced to writing, indicating the specific competency factors considered and reasons for his decision.

.3 Patents in Fee.

A. Authority.

(1) Statutory. General statutory authority for the issuance of patents in fee is found in the Act of May 8, 1906, as amended (34 Stat. 182, 183; 25 U.S.C. 349); the Act of June 25, 1910, as amended (36 Stat. 855; 25 U.S.C. 372); and the Act of May 14, 1948 (62 Stat. 236; 25 U.S.C. 483). Special authorities, applicable to certain reservations, also are in existence.

* NOTE: Using Therese L. Lozeau as device on Journal Voucher, dated Sept 20, 1950 puts Edward Lozeau, Deceased top of Payment list. Edward Lozeau is not Entitled to any share after April 24, 1946 per "Order Determining HEIRS".

Rights Protection * June 27, 1983

Mr. Thomas Alfred Lozeau
Box 372
Ronan, MT 59864

Dear Mr. Lozeau:

* I have the following information to relay to your concerning your inheritance of lands on the Flathead Reservation.

* You inherited undivided interests in Flathead allotments as follows:

* Allotment No. 1610, Gabriel Bighorn, Deceased
SE1/4NW1/4 Sec. 7, T.16N., R.19W., P.M.M., 40 acres
* 1/9 interest inherited from mother,
Therese L. Lozeau, deceased, 203-A00747. * 4/45 interest inherited from father,
** Edward Lozeau, deceased, 203-A00746.
* Total inherited interest = 1/5.

Allotment No. 2889, Margaret Lozeau, Deceased
NW1/4SE1/4, S1/2SE1/4, NE1/4SE1/4, Sec. 32, T.18N., R.22W., P.M.M., 160 acres.
1/18 interest inherited from sister,
Margaret Lozeau, deceased, 203-A02889
13/90 interest inherited from father,
Edward Lozeau, deceased, 203-A00746
Total inherited interest = 1/5

Allotment No. 2891, Agnes Lozeau, Deceased
Lots 3,4,6, SW1/4NW1/4 and NW1/4SW1/4 Sec.4, T.17N., R.22W., P.M.M., 139.62 acres.
1/5 interest inherited from father,
Edward Lozeau, deceased, 203-A00746

Allotment No. 409, Frank Lillacelle, Deceased
SE1/4SE1/4 Sec.23, T.19N., R.21W., P.M.M., 40 acres.
1/2 interest inherited from grandmother,
Isabel Carron Charley, deceased, 203-A00408

Our records show those lands being disposed of in the following manner:

* Allotment No. 1610 - This allotment was conveyed to Clara Keenan Dumontier on September 1, 1950 by a Secretarial Transfer of Inherited Interests. You did not consent to this transfer as evidenced by the attached letter dated February 7, 1950 from Superintendent C.C. Wright to the Billings Area Director, Paul L. Fickinger. At the time this transfer was made it was believed the Area Director had the authority to approve such transactions. It has since been determined he did not and this particular case will be forwarded to our Portland Area Office as a Secretarial Transfer case under authority of the Statute of Limitations 28 U.S.C. 2415. We will keep you advised of the outcome of the case. Additionally, our records show you were compensated for transfer of your interests. Journal Voucher No. 265-49 dated September 29, 1959 transferred $55.54 to your Individual Indian Monies account in payment of your interests.

Allotment No. 2889 - Your undivided 1/5 interest in this allotment was sold to the Confederated Salish and Kootenai Tribes in 1964. Our records contain a Consent to Sale bearing your signature and a witness' signature. The witness is Charles M. Austin. The Deed to Restricted Indian Land was signed by you on June 22, 1964. The same Charles M. Austin, Parole Officer, witnessed your signature. The deed shows your residence to be Stellacoom, Washington. Our files contain a letter from you dated September 18, 1964 requesting funds from sale of your interests in Allotments No. 2889 and 2891 be sent to you. Our records show that Check No. 392,998 was issued to you on October 1, 1964, in the amount of $2,150.00 representing payment for sale of your undivided 1/5 interests in Allotment No. 2891, $930.00, and for sale of your undivided interests in Allotment No. 2889, $1,220.00. Photocopies of U.S. Treasury Checks are retained only seven years so we cannot compare the check endorsement to other documents bearing your signature.

Allotment No. 2891 - Your undivided 1/5 interest in this allotment was conveyed to the Confederated Salish and Kootenai Tribes in 1964. A Consent to Sale bears your signature and the signature of a witness, Charles M. Austin. The Deed to Restricted Indian Land was signed by you on June 22, 1964 and your signature witnessed by Charles M. Austin, Parole Officer. Your address appears on the deed as Stellacoom, Washington. All signatures appear to be written by the same person.

Allotment No. 409 - You indicated your desire to sell your undivided interest in this allotment in the late 1950's. The property was advertised for sale and a bid accepted. When the deed was forwarded to you, you declined to sign it stating your reasons in a letter dated October 26, 1959. In 1972 you were informed that the Tribes had offered to purchase your interest. You signed the Deed to Restricted Indian Land on February 1972 and your signature was witnessed by R.G. Houser, Parole Officer. Your address is listed on the deed as being Steilacoom, Washington. Our records show Check No. 2,290,379 was issued to you on March 2, 1972. The endorsement cannot be checked because of the length of time that has passed since its issuance.

As you know, Allotment No. 2891 was reduced in size from 160 acres to 139.62 acres in the 1950's when mineral claims were removed. The Superintendent will make an administrative decision on proper title reversion for the 20.38 acres removed in the near future. We will keep you advised on that matter.

In every case, except the transfer of Allotment No. 1610, it is felt that our records show that you consented to the sale of your interests, and that in all cases you received just compensation for sale of your interests. If you still feel that you did not consent to these sales, nor sign the deeds of conveyance, you have the option of pursuing the matter through your own attorney. All of our records will be made available to you for that purpose.

If we can be of further assistance to you, please let us know.

Sincerely,

Superintendent

RIGHTSPROTECTION:RRCAMEL:gkm:06/29/83
bcc: Supt's Chrono
Rights Reading File
Subject file

Flathead Agency,
Dixon, Montana,
February 7, 1950.

610

Mr. Paul L. Fickinger, Area Director,
Billings Area, U. S. Indian Service,
304 North 29th Street,
Billings, Montana.

For the attention of:
Mr. Kenneth W. Green, Area Land Officer.

Dear Sir:

Clara Keenan Dumontier, Flathead allottee No. 2835, has an approved Revolving Credit Fund Loan, No. CF 457 for which to purchase additional lands. Accordingly, conveyance papers are enclosed covering the sale of the Isabel Incoss, deceased allotment No. 1608, and the Gabrielle Bighorn, deceased allotment No. 1610.

Allotment 1608 is being conveyed entirely by deed. The consideration is the appraised valuation as found by the Appraisal Board of the Tribes, $1030.

Allotment 1610 is being conveyed by deed and by Secretarial Order. The SE¼NW¼, Section 7, T. 16 N., R.19 W., was willed to Therese L. Loxeau, deceased Flathead allottee No. 747, the remaining 40 acres of the allotment was willed to Lucy Whitfield, deceased Nez Perce allottee and, Melinda and Effie Whitfield. Four minor heirs are involved in the conveyance of the Loxeau tract. We have been successful in obtaining the signatures of all the adult heirs, excepting Thomas A. Loxeau, who refuses to execute any instrument unless the money is paid directly to him and not thru this Agency's accounts. Edward Loxeau, deceased heir of Therese L. Loxeau, deceased, has a large claim against his share of the estate, however, his heirs are the same as the heirs to the Therese L. Loxeau estate. We are therefor safe in stating that a majority of the adult heirs of signed the consents to sale. George Mitchell, one of the minor heirs has failed to return his Consent to the Sale. The adoptive parents of the remaining heirs who are minors have all signed the Consents.

This transaction place another tract of heirship lands in one ownership, and into Indian operation. Approval is hereby recommended.

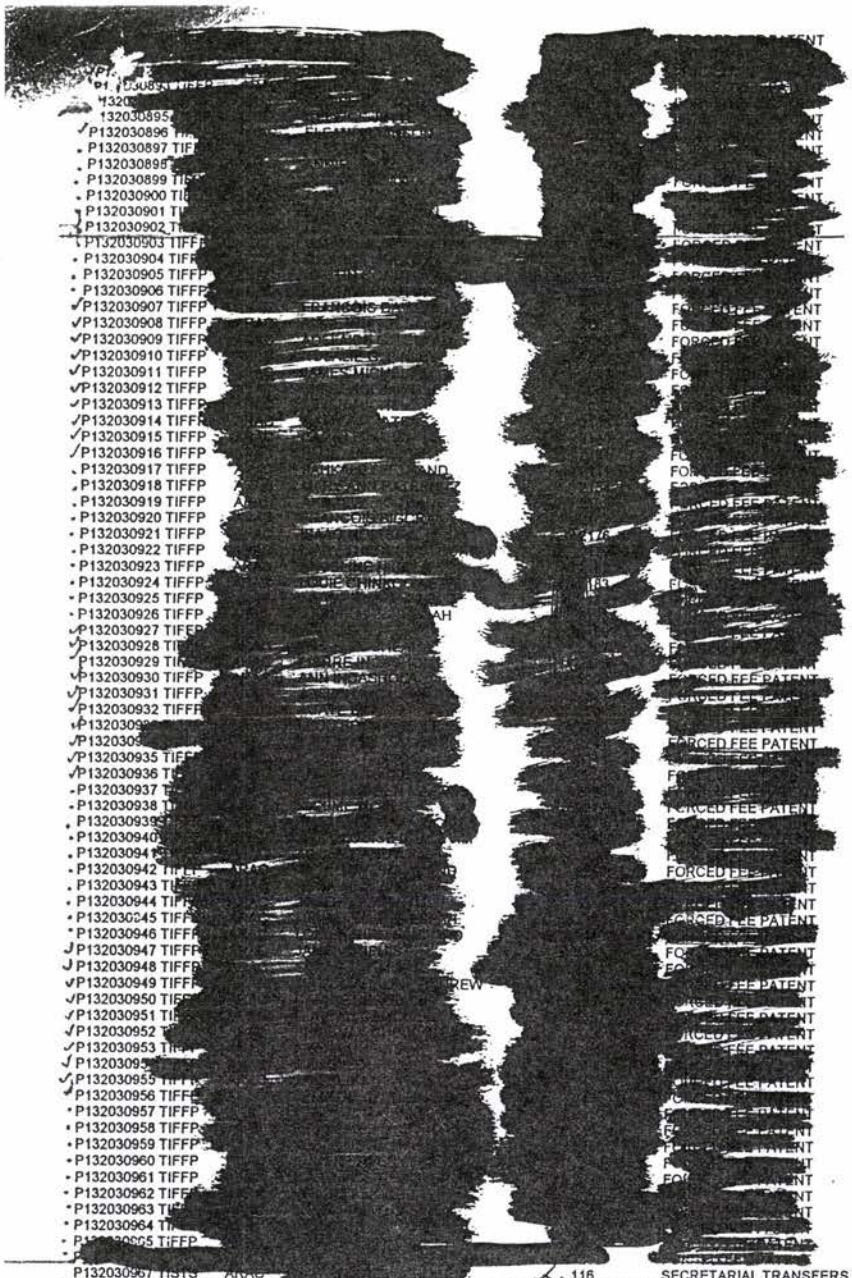
Very truly yours,

C. C. Wright,
Superintendent.

610
FEB 13 AM

JJ
encl.

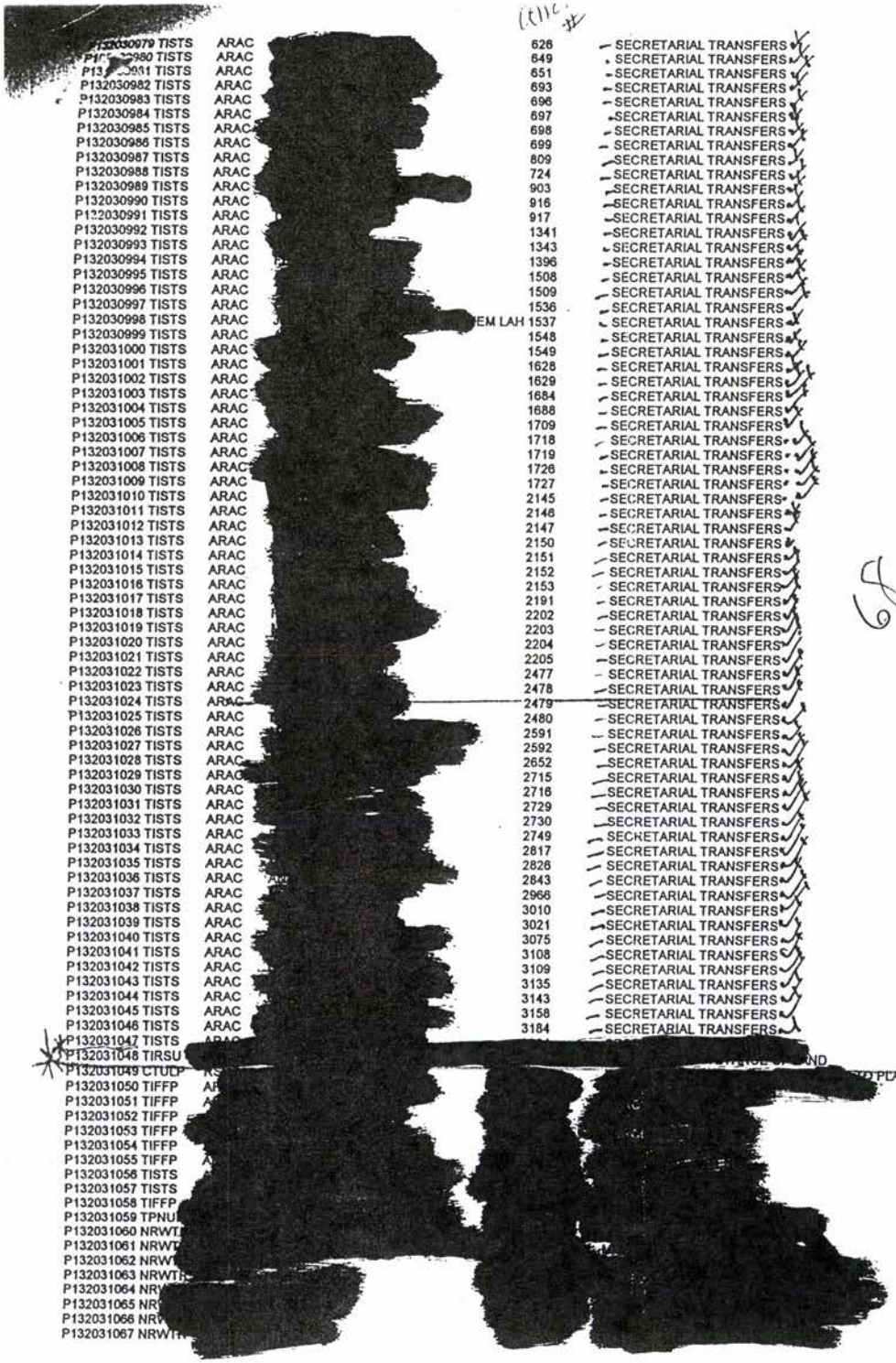
P. S. Thomas A. Loxeau does not object to the sale but does object to his money coming thru the office, where it more than likely will be used for the support of a minor child now living with her mother, and former wife of Thmas A. Loxeau. We have been unable to obtain an answer from him in writing. We see no reason for delaying completion of this case awaiting further word from him.



| | | | | | | | |
|---|---|---|---|---|---|---|---|
| P132030967 TISTS | ARAC | 116 | SECRETARIAL TRANSFERS | 1 A | 05/01/80 | 11/01/82 | 04/28/84 |
| P132030968 TISTS | ARAC | 133 | SECRETARIAL TRANSFERS | 1 A | 07/01/80 | 11/01/82 | 04/28/84 |
| P132030969 TISTS | ARAC | 218 | SECRETARIAL TRANSFERS | 1 A | 07/01/80 | 11/01/82 | 04/28/84 |
| P132030970 TISTS | ARAC | 219 | SECRETARIAL TRANSFERS | 1 A | 07/01/80 | 11/01/82 | 04/28/84 |
| P132030971 TISTS | ARAC | 357 | SECRETARIAL TRANSFERS | 1 A | 07/01/80 | 11/01/82 | 04/28/84 |
| P132030972 TISTS | ARAC | 359 | SECRETARIAL TRANSFERS | 1 A | 07/01/80 | 11/01/82 | 04/28/84 |
| P132030973 TISTS | ARAC | 363 | SECRETARIAL TRANSFERS | 1 A | 07/01/80 | 11/01/82 | 04/28/84 |
| P132030974 TISTS | ARAC | 376 | SECRETARIAL TRANSFERS | 1 A | 07/01/80 | 11/01/82 | 04/28/84 |
| P132030975 TISTS | ARAC | 587 | SECRETARIAL TRANSFERS | 1 A | 07/01/80 | 11/01/82 | 04/28/84 |
| P132030976 TISTS | ARAC | 588 | SECRETARIAL TRANSFERS | 1 A | 07/01/80 | 11/01/82 | 04/28/84 |
| P132030977 TISTS | ARAC | 589 | SECRETARIAL TRANSFERS | 1 A | 07/01/80 | 11/01/82 | 04/28/84 |
| P132030978 TISTS | ARAC | 625 | SECRETARIAL TRANSFERS | 1 A | 07/01/80 | 11/01/82 | 04/28/84 |

Secretarial Transfers of C.S.K.T. Members Allotments,

C.S.K.T. has not fulfilled their Fiduciary Trust responsability to protect their Alloted Lands held in Trust for them, instead they exploited them of their Lands and Resources. In 1997-1999 C.S.K.T. allowed Stimson Lumber Company to harvest the timber and did not pay the Rightful owner for the Timber removed.



| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| [redacted]030979 TISTS | ARAC | 626 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| [redacted]030980 TISTS | ARAC | 649 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| [redacted]030981 TISTS | ARAC | 651 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132030982 TISTS | ARAC | 693 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132030983 TISTS | ARAC | 696 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132030984 TISTS | ARAC | 697 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132030985 TISTS | ARAC | 698 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132030986 TISTS | ARAC | 699 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132030987 TISTS | ARAC | 809 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132030988 TISTS | ARAC | 724 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132030989 TISTS | ARAC | 903 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132030990 TISTS | ARAC | 916 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132030991 TISTS | ARAC | 917 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132030992 TISTS | ARAC | 1341 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132030993 TISTS | ARAC | 1343 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132030994 TISTS | ARAC | 1396 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132030995 TISTS | ARAC | 1508 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132030996 TISTS | ARAC | 1509 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132030997 TISTS | ARAC | 1536 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132030998 TISTS | ARAC [redacted]EM LAH | 1537 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132030999 TISTS | ARAC | 1548 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031000 TISTS | ARAC | 1549 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 10/12/94 |
| P132031001 TISTS | ARAC | 1628 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031002 TISTS | ARAC | 1629 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031003 TISTS | ARAC | 1684 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031004 TISTS | ARAC | 1688 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031005 TISTS | ARAC | 1709 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031006 TISTS | ARAC | 1718 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031007 TISTS | ARAC | 1719 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031008 TISTS | ARAC | 1726 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031009 TISTS | ARAC | 1727 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031010 TISTS | ARAC | 2145 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031011 TISTS | ARAC | 2146 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031012 TISTS | ARAC | 2147 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031013 TISTS | ARAC | 2150 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031014 TISTS | ARAC | 2151 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031015 TISTS | ARAC | 2152 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031016 TISTS | ARAC | 2153 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031017 TISTS | ARAC | 2191 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031018 TISTS | ARAC | 2202 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031019 TISTS | ARAC | 2203 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031020 TISTS | ARAC | 2204 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031021 TISTS | ARAC | 2205 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031022 TISTS | ARAC | 2477 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031023 TISTS | ARAC | 2478 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031024 TISTS | ARAC | 2479 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031025 TISTS | ARAC | 2480 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031026 TISTS | ARAC | 2591 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031027 TISTS | ARAC | 2592 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031028 TISTS | ARAC | 2652 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031029 TISTS | ARAC | 2715 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031030 TISTS | ARAC | 2716 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031031 TISTS | ARAC | 2729 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031032 TISTS | ARAC | 2730 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031033 TISTS | ARAC | 2749 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031034 TISTS | ARAC | 2817 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031035 TISTS | ARAC | 2826 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031036 TISTS | ARAC | 2843 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031037 TISTS | ARAC | 2966 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031038 TISTS | ARAC | 3010 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031039 TISTS | ARAC | 3021 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031040 TISTS | ARAC | 3075 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031041 TISTS | ARAC | 3108 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031042 TISTS | ARAC | 3109 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031043 TISTS | ARAC | 3135 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031044 TISTS | ARAC | 3143 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031045 TISTS | ARAC | 3158 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031046 TISTS | ARAC | 3184 | SECRETARIAL TRANSFERS | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031047 TISTS | ARAC | | | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031048 TIRSU | [redacted] | | [redacted] | | 1 | A | | | 07/01/80 | 11/01/82 | 04/28/84 |
| P132031049 CTUDP | [redacted] | | [redacted] | | 1 | R | 04/12/91 | 12/20/91 | 04/01/80 | 12/20/91 | 03/19/92 |
| P132031050 TIFFP | [redacted] | | [redacted] | D PLAINTI | 1 | R | 04/12/91 | 12/20/91 | 09/01/80 | 12/20/91 | 03/19/92 |
| P132031051 TIFFP | [redacted] | | | | 1 | A | | | 05/01/80 | 10/29/80 | 04/28/84 |
| P132031052 TIFFP | [redacted] | | | | 1 | A | | | 12/01/81 | 11/01/82 | 04/28/84 |
| P132031053 TIFFP | [redacted] | | | | 1 | A | | | 12/01/81 | 11/01/82 | 04/28/84 |
| P132031054 TIFFP | [redacted] | | | | 1 | A | | | 12/01/81 | 11/01/82 | 04/28/84 |
| P132031055 TIFFP | [redacted] | | | | 1 | A | | | 12/01/81 | 11/01/82 | 04/28/84 |
| P132031056 TISTS | [redacted] | | | | 1 | A | | | 12/01/81 | 11/01/82 | 04/28/84 |
| P132031057 TISTS | [redacted] | | | | 1 | A | | | 10/29/81 | 11/01/82 | 04/28/84 |
| P132031058 TIFFP | [redacted] | | | | 1 | A | | | 10/29/81 | 11/01/82 | 04/28/84 |
| P132031059 TPNU | [redacted] | | | | 1 | A | | | 05/01/80 | 10/29/80 | 04/28/84 |
| P132031060 NRWT | [redacted] | | | | 1 | A | | | 02/01/81 | 05/22/85 | 05/22/91 |
| P132031061 NRWT | [redacted] | | | | 1 | A | | | 02/01/81 | 10/23/89 | 05/22/91 |
| P132031062 NRWT | [redacted] | | | | 1 | A | | | 02/01/81 | 10/23/89 | 05/22/91 |
| P132031063 NRWT | [redacted] | | | | 1 | A | | | 02/01/81 | 10/23/89 | 05/22/91 |
| P132031064 NRW | [redacted] | | | | 1 | A | | | 02/01/81 | 10/23/89 | 05/22/91 |
| P132031065 NRW | [redacted] | | | | 1 | A | | | 02/01/81 | 10/23/89 | 05/22/91 |
| P132031066 NRW | [redacted] | | | | 1 | A | | | 02/01/81 | 10/23/89 | 05/22/91 |
| P132031067 NRWT | [redacted] | | | | 1 | A | | | 02/01/81 | 10/23/89 | 05/22/91 |

ment contract or contract for disposal of government property and, thus, manufacturer was not entitled to interest on indemnification pursuant to Contract Disputes Act. Cedar Chemical Corp. v. U.S., Cl.Ct.1989, 18 Cl.Ct. 25. United States ⇐ 110

**6. Costs**

Successful social security disability benefits claimant was entitled to district court filing fee of $60 as reimbursement for costs, but was not entitled to reimbursement for ordinary litigation expenses under cost provision. Coup v. Heckler, W.D.Pa.1989, 706 F.Supp. 405. Social Security And Public Welfare ⇐ 142.30

**7. Interest**

Interest on judgment against government in action based on alleged medical malpractice at federally operated hospital could only be awarded when judgment became final after review on appeal, rather than when judgment was entered. Starns v. U.S., C.A.4 (Va.) 1991, 923 F.2d 34, certiorari denied 112 S.Ct. 54, 502 U.S. 809, 116 L.Ed.2d 31. United States ⇐ 110

**8. Attorney fees**

Judgment fund statute, providing for government's payment of judgment only when judgment is final, did not preclude, under sovereign immunity theory, award of interim attorney fees in Title VII employment discrimination action against government. Trout v. Garrett, C.A.D.C. 1989, 891 F.2d 332, 282 U.S.App.D.C. 33. Civil Rights ⇐ 1588; Civil Rights ⇐ 1598

Once Congress waived sovereign immunity from award of attorney fees in FOIA actions, through FOIA attorney fee provision, no additional waiver of sovereign immunity was required to permit interim award of attorney fees, and statute providing for payment of judgments against United States out of judgment fund that permits payment only when judgment is final was not superseding limitation on Government's waiver of sovereign immunity with respect to award of attorney fees under FOIA. Rosenfeld v. U.S., C.A.9 (Cal.) 1988, 859 F.2d 717. Records ⇐ 68

Interim fee award made in Freedom of Information Act (FOIA) suit can be ordered to be paid before the judgment becomes final. Washington Post v. U.S. Dept. of Defense, D.D.C.1992, 789 F.Supp. 423. Records ⇐ 68

General provisions authorizing appropriation of federal funds to pay judgments against United States did not prohibit award of interim attorney fees against federal government in Title VII action. McKenzie v. Kennickell, D.D.C.1987, 669 F.Supp. 529. Civil Rights ⇐ 1588; Civil Rights ⇐ 1598

Interim award of attorney fees against government was immediately payable in employment discrimination class action under Title VII of the Civil Rights Act even though final judgment had not yet been entered. Jurgens v. E.E.O.C., N.D.Tex.1987, 660 F.Supp. 1097. Civil Rights ⇐ 1598

## § 2415. Time for commencing actions brought by the United States

(a) Subject to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States or an officer or agency thereof which is founded upon any contract express or implied in law or fact, shall be barred unless the complaint is filed within six years after the right of action accrues or within one year after final decisions have been rendered in applicable administrative proceedings required by contract or by law, whichever is later: *Provided*, That in the event of later partial payment or written acknowledgment of debt, the right of action shall be deemed to accrue again at the time of each such payment or acknowledgment: *Provided further*, That an action for





money damages brought by the United States for or on behalf of a recognized tribe, band or group of American Indians shall not be barred unless the complaint is filed more than six years and ninety days after the right of action accrued: *Provided further*, That an action for money damages which accrued on the date of enactment of this Act in accordance with subsection (g) brought by the United States for or on behalf of a recognized tribe, band, or group of American Indians, or on behalf of an individual Indian whose land is held in trust or restricted status, shall not be barred unless the complaint is filed sixty days after the date of publication of the list required by section 4(c) of the Indian Claims Limitation Act of 1982: *Provided*, That, for those claims that are on either of the two lists published pursuant to the Indian Claims Limitation Act of 1982, any right of action shall be barred unless the complaint is filed within (1) one year after the Secretary of the Interior has published in the Federal Register a notice rejecting such claim or (2) three years after the date the Secretary of the Interior has submitted legislation or legislative report to Congress to resolve such claim or more than two years after a final decision has been rendered in applicable administrative proceedings required by contract or by law, whichever is later.

(b) Subject to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States or an officer or agency thereof which is founded upon a tort shall be barred unless the complaint is filed within three years after the right of action first accrues: *Provided*, That an action to recover damages resulting from a trespass on lands of the United States; an action to recover damages resulting from fire to such lands; an action to recover for diversion of money paid under a grant program; and an action for conversion of property of the United States may be brought within six years after the right of action accrues, except that such actions for or on behalf of a recognized tribe, band or group of American Indians, including actions relating to allotted trust or restricted Indian lands, may be brought within six years and ninety days after the right of action accrues, except that such actions for or on behalf of a recognized tribe, band, or group of American Indians, including actions relating to allotted trust or restricted Indian lands, or on behalf of an individual Indian whose land is held in trust or restricted status which accrued on the date of enactment of this Act in accordance with subsection (g) may be brought on or before sixty days after the date of the publication of the list required by section 4(c) of the Indian Claims Limitation Act of 1982: *Provided*, That, for those claims that are on either of the two lists published pursuant to the Indian Claims Limitation Act of 1982, any right of action shall be

barred unless the complaint is filed within (1) one year after the Secretary of the Interior has published in the Federal Register a notice rejecting such claim or (2) three years after the Secretary of the Interior has submitted legislation or legislative report to Congress to resolve such claim.

(c) Nothing herein shall be deemed to limit the time for bringing an action to establish the title to, or right of possession of, real or personal property.

(d) Subject to the provisions of section 2416 of this title and except as otherwise provided by Congress, every action for the recovery of money erroneously paid to or on behalf of any civilian employee of any agency of the United States or to or on behalf of any member or dependent of any member of the uniformed services of the United States, incident to the employment or services of such employee or member, shall be barred unless the complaint is filed within six years after the right of action accrues: *Provided*, That in the event of later partial payment or written acknowledgment of debt, the right of action shall be deemed to accrue again at the time of each such payment or acknowledgment.

(e) In the event that any action to which this section applies is timely brought and is thereafter dismissed without prejudice, the action may be recommenced within one year after such dismissal, regardless of whether the action would otherwise then be barred by this section. In any action so recommenced the defendant shall not be barred from interposing any claim which would not have been barred in the original action.

(f) The provisions of this section shall not prevent the assertion, in an action against the United States or an officer or agency thereof, of any claim of the United States or an officer or agency thereof against an opposing party, a co-party, or a third party that arises out of the transaction or occurrence that is the subject matter of the opposing party's claim. A claim of the United States or an officer or agency thereof that does not arise out of the transaction or occurrence that is the subject matter of the opposing party's claim may, if time-barred, be asserted only by way of offset and may be allowed in an amount not to exceed the amount of the opposing party's recovery.

(g) Any right of action subject to the provisions of this section which accrued prior to the date of enactment of this Act shall, for purposes of this section, be deemed to have accrued on the date of enactment of this Act.

(h) Nothing in this Act shall apply to actions brought under the Internal Revenue Code or incidental to the collection of taxes imposed by the United States.





(i) The provisions of this section shall not prevent the United States or an officer or agency thereof from collecting any claim of the United States by means of administrative offset, in accordance with section 3716 of title 31.

(Added Pub.L. 89–505, § 1, July 18, 1966, 80 Stat. 304, and amended Pub.L. 92–353, July 18, 1972, 86 Stat. 499; Pub.L. 92–485, Oct. 13, 1972, 86 Stat. 803; Pub.L. 95–64, July 11, 1977, 91 Stat. 268; Pub.L. 95–103, Aug. 15, 1977, 91 Stat. 842; Pub.L. 96–217, § 1, Mar. 27, 1980, 94 Stat. 126; Pub.L. 97–365, § 9, Oct. 25, 1982, 96 Stat. 1754; Pub.L. 97–394, Title I, § 2, Dec. 30, 1982, 96 Stat. 1976; Pub.L. 97–452, § 2(d)(2), Jan. 12, 1983, 96 Stat. 2478; Pub.L. 98–250, § 4(a), Apr. 3, 1984, 98 Stat. 118.)

## HISTORICAL AND STATUTORY NOTES

**Revision Notes and Legislative Reports**

**1966 Acts.** Senate Report No. 1328, see 1966 U.S. Code Cong. and Adm. News, p. 2502.

**1972 Acts.** Senate Report No. 92–1253, see 1972 U.S. Code Cong. and Adm. News, p. 3592.

**1977 Acts.** House Report No. 95–375 and House Conference Report No. 95–505, see 1977 U.S. Code Cong. and Adm. News, p. 1616.

**1980 Acts.** House Report No. 96–807 and House Conference Report No. 96–843, see 1980 U.S. Code Cong. and Adm. News, p. 206.

**1982 Acts.** Senate Report Nos. 97–378 and 97–287, see 1982 U.S. Code Cong. and Adm. News, p. 3377.

**1983 Acts.** Detailed Explanation prepared by the Office of the Law Revision Counsel, see 1982 U.S. Code Cong. and Adm. News, p. 4301.

**1984 Acts.** House Report No. 98–611, see 1984 U.S. Code Cong. and Adm. News, p. 319.

**References in Text**

The date of enactment of this Act, referred to in subsecs. (a), (b), and (g), means the date of enactment of Pub.L. 89–505, which was approved on July 18, 1966.

The Indian Claims Limitation Act of 1982, referred to in subsecs. (a) and (b), is Pub.L. 97–394, Title I, §§ 2–6, Dec. 30, 1982, 96 Stat. 1976–1978, which amended this section and enacted provisions set out as notes under this section. For complete classification of this Act to the Code, see Short Title of 1982 Amendments note set out under this section and Tables.

This Act, referred to in subsec. (h), means Pub.L. 89–505, July 18, 1966, 80 Stat. 304, which enacted this section and section 2416 of this title. For complete classification of this Act to the Code see Tables.

**Amendments**

**1984 Amendments.** Subsecs. (a), (b). Pub.L. 98–250 substituted "Indian Claims Limitation Act of 1982" for "Indian Claims Act of 1982" wherever appearing.

**1983 Amendments.** Subsec. (i). Pub.L. 97–452 substituted "section 3716 of title 31" for "section 5 of the Federal Claims Collection Act of 1966".

**1982 Amendments.** Subsec. (a). Pub.L. 97–394, § 2(a), substituted "sixty days after the date of publication of the list required by section 4(c) of the Indian Claims Act of 1982: *Provided*, That, for those claims that are on either of the two lists published pursuant to the Indian Claims Act of 1982, any right of action shall be barred unless the complaint is filed within (1) one year after the Secretary of the Interior has published in the Federal Register a notice rejecting such claim or (2) three years after the date the Secretary of the Interior has submitted legislation or legislative report to Congress to resolve such claim" for "after December 31, 1982".

Subsec. (b). Pub.L. 97–394, § 2(b), substituted "sixty days after the date of the publication of the list required by section 4(c) of the Indian Claims Act of 1982: *Provided*, That, for those claims that are on either of the two lists published pursuant to the Indian Claims Act of 1982, any right of action shall be barred unless the complaint is filed within (1) one year after the Secretary of the Interi-

DATE: 11/16/2011
TIME: 10:41:00 CST

**UNITED STATES DEPARTMENT OF THE INTERIOR**
**BUREAU OF INDIAN AFFAIRS**
TRACT HISTORY REPORT



589-A

LAND AREA: 203 PFX: T NUMBER: 589 SUFFIX: -A
LTRO: PORTLAND, OR RESERVATION: FLATHEAD

TRACT REMARKS:
NO TRACT REMARKS FOUND

Where is Tract NAME?
Original Allotee HARD Copy Tract History

| DOCUMENT DATE | CLS | TYP | ID | IMAGE/REEL NO. | DOCUMENT NOTES REMARK OR EXPLANATION |
|---|---|---|---|---|---|
| 10/08/1908 | 01 | | 13147 | | |

TITLE IS SUBJECT TO THE FOLLOWING ENCUMBRANCES:

NO ENCUMBRANCES FOUND.

| LAND DESCRIPTION SEC | TWNSHP | RANGE | COUNTY | STATE | MERIDIAN | LEGAL DESCRIPTION | COUNTY ACRES |
|---|---|---|---|---|---|---|---|
| 800 | 018.00N | 021.00W | SANDERS | MT | Principal | | 0.000 |

DESCRIPTION
NO LRIS LEGAL FOR THIS DOCUMENT

TOTAL SECTION ACRES: 0.000
TOTAL TRACT ACRES: 0.000

NO OWNERSHIP INFORMATION FOUND

| DOCUMENT DATE | CLS | TYP | ID | IMAGE/REEL NO. | DOCUMENT NOTES REMARK OR EXPLANATION |
|---|---|---|---|---|---|
| 07/08/1954 | 08 | | 1128 | | ORDER OF TRANSFER OF INHERITED INTEREST |

TITLE IS SUBJECT TO THE FOLLOWING ENCUMBRANCES:

| NATURE OF ENCUMBRANCE | ENCUMBRANCE HOLDER | BEGINNING DATE | EXPIRATION DATE |
|---|---|---|---|
| MISCELLANEOUS | ----- | | PERPETUAL |

DESCRIPTION:
ORDER TRANS INHERITED INTMAY NOT BE IN ACCORDANCE WITH ACTS 5-14-48 (62 STAT 236) AS INTERPRETED BY SOLICITORS OPINION OF 6-24-55, ACT 6-25-10 (36 STAT 855) INAPPLICABLE BY1948 ACT REQUIRING CON- SENT OF ALL INDIAN OWNERSON IRA RESERVATION.

Report Cont...

**UNITED STATES DEPARTMENT OF THE INTERIOR**
**BUREAU OF INDIAN AFFAIRS**
TRACT HISTORY REPORT



LAND AREA: 203 PFX: T NUMBER: 589 SUFFIX: -A
LTRO: PORTLAND, OR RESERVATION: FLATHEAD

| LAND DESCRIPTION | | | | | | | |
|---|---|---|---|---|---|---|---|
| SEC | TWNSHP | RANGE | COUNTY | STATE | MERIDIAN | LEGAL DESCRIPTION | COUNTY ACRES |
| 32 | 018.00N | 021.00W | SANDERS | MT | Principal | W SE | 80.000 |
| | | | | | | TOTAL SECTION ACRES: | 80.000 |
| | | | | | | TOTAL TRACT ACRES: | 80.000 |

| GRANTOR | | | | NAME IN WHICH TRANSACTED | FRACTION CONVEYED | OWNERSHIP |
|---|---|---|---|---|---|---|
| ID | TYP | OT | INT | (SURNAME/FIRST NAME) | | |
| 203A000589 | I | T | A | FINLEY | 1 | 1 |
| | | | | HEIRS OF LUCY | 1 | 1 |

| GRANTEE | | | | | NAME IN WHICH TRANSACTED | FRACTION CONVEYED | OWNERSHIP |
|---|---|---|---|---|---|---|---|
| ID | TYP | OT | INT | REL | (SURNAME/FIRST NAME) | | |
| 203T203-30 | T | T | A | O | FLATHEAD TRIBES | 1 | 1 |
| | | | | | | 1 | 1 |

| DOCUMENT | | | | --- DOCUMENT NOTES --- |
|---|---|---|---|---|
| DATE | CLS | TYP | ID | IMAGE/REEL NO. / REMARK OR EXPLANATION |
| 07/18/1997 | 26 | TI | 30808 | |

TITLE IS SUBJECT TO THE FOLLOWING ENCUMBRANCES:

| NATURE OF ENCUMBRANCE | ENCUMBRANCE HOLDER | BEGINNING DATE | EXPIRATION DATE |
|---|---|---|---|
| TIMBER LEASE | STIMSON LUMBER COMPANY | | 09/30/1999 |

DESCRIPTION:
---
TERMS AND CONDITIONS OF ATIMBER CONTRACT APROVED ,7/18/1997, FOR THE SELOW CREEK LOGGING UNIT.

| LAND DESCRIPTION | | | | | | | |
|---|---|---|---|---|---|---|---|
| SEC | TWNSHP | RANGE | COUNTY | STATE | MERIDIAN | LEGAL DESCRIPTION | COUNTY ACRES |
| 32 | 018.00N | 021.00W | SANDERS | MT | Principal | W SE | 80.000 |
| | | | | | | TOTAL SECTION ACRES: | 80.000 |
| | | | | | | TOTAL TRACT ACRES: | 80.000 |

NO OWNERSHIP INFORMATION FOUND

Report Cont...

LAND AREA: 203 PFX: T NUMBER: 589 SUFFIX: -A
LTRO: PORTLAND, OR RESERVATION: FLATHEAD

| DOCUMENT DATE | CLS | TYP | ID | IMAGE/REEL NO. | DOCUMENT NOTES REMARK OR EXPLANATION |
|---|---|---|---|---|---|
| 05/20/2003 | | RU | 0000170310 | 34605 | |

TITLE IS SUBJECT TO THE FOLLOWING ENCUMBRANCES:

| CONTRACTOR | CONTRACTOR NAME | BEGINNING DATE | EXPIRATION DATE | LEASED ACRES |
|---|---|---|---|---|
| 203C000468 | DIXON INDIAN STOCK ASSOCIATION | 3/1/2008 | 12/31/2010 | 80.000 |

| LAND DESCRIPTION SEC | TWNSHP | RANGE | COUNTY | STATE | MERIDIAN | LEGAL DESCRIPTION | COUNTY ACRES |
|---|---|---|---|---|---|---|---|
| 32 | 018.00N | 021.00W | SANDERS | MT | Principal | LOT 99 | 80.000 |
| | | | | | | TOTAL SECTION ACRES: | 80.000 |
| | | | | | | TOTAL TRACT ACRES: | 80.000 |

NO OWNERSHIP INFORMATION FOUND

| DOCUMENT DATE | CLS | TYP | ID | IMAGE/REEL NO. | DOCUMENT NOTES REMARK OR EXPLANATION |
|---|---|---|---|---|---|
| 05/20/2003 | 23 | RU | 34605 | | |

TITLE IS SUBJECT TO THE FOLLOWING ENCUMBRANCES:

| NATURE OF ENCUMBRANCE | ENCUMBRANCE HOLDER | BEGINNING DATE | EXPIRATION DATE |
|---|---|---|---|
| RANGE UNIT | DIXON INDIAN STOCK ASSOCIATION | | 12/31/2010 |

DESCRIPTION:

RANGE UNIT PERMIT #0017 FOR A TERM OF 8 YEARS COMMENCING 1-1-2003 APPROVED 5-20-2003.

| LAND DESCRIPTION SEC | TWNSHP | RANGE | COUNTY | STATE | MERIDIAN | LEGAL DESCRIPTION | COUNTY ACRES |
|---|---|---|---|---|---|---|---|
| 32 | 018.00N | 021.00W | SANDERS | MT | Principal | W SE | 80.000 |
| | | | | | | TOTAL SECTION ACRES: | 80.000 |

Report Cont...

LAND AREA: 203 PFX: T NUMBER: 589 SUFFIX: -A
LTRO: PORTLAND, OR RESERVATION: FLATHEAD

TOTAL TRACT ACRES: 80.000

NO OWNERSHIP INFORMATION FOUND

| DOCUMENT DATE | DOCUMENT CLS | DOCUMENT TYP | DOCUMENT ID | IMAGE/REEL NO. | DOCUMENT NOTES REMARK OR EXPLANATION |
|---|---|---|---|---|---|
| 05/11/2011 | | RU | 0000171120 | 42596-42650 | |

TITLE IS SUBJECT TO THE FOLLOWING ENCUMBRANCES:

| CONTRACTOR | CONTRACTOR NAME | BEGINNING DATE | EXPIRATION DATE | LEASED ACRES |
|---|---|---|---|---|
| 203C000468 | DIXON INDIAN STOCK ASSOCIATION | 1/1/2011 | 12/31/2020 | 80.000 |

| LAND DESCRIPTION SEC | TWNSHP | RANGE | COUNTY | STATE | MERIDIAN | LEGAL DESCRIPTION | COUNTY ACRES |
|---|---|---|---|---|---|---|---|
| 32 | 018.00N | 021.00W | SANDERS | MT | Principal | LOT 99 | 80.000 |
| | | | | | | TOTAL SECTION ACRES: | 80.000 |
| | | | | | | TOTAL TRACT ACRES: | 80.000 |

NO OWNERSHIP INFORMATION FOUND

* * * * End of Report * * * *

* My father, T.A.L.J.

June 6, 1985

Rights Protection, Flathead Agency

* Thomas A. Lozeau - Allegations Presented in Justice Department Letter

Portland Area Director, Mailing Code P100

FROM: Superintendent, Flathead Agency

* Research of files located in the Agency Realty and Rights Protection offices concerning Mr. Thomas A. Lozeau show a series of contact and research dating back at least to June of 1983. At that time, Mr. Lozeau had made an offer to the Tribal Council to sell any interest he had in the Arlee Pow-wow grounds. Agency records did not show that he had any interest in Allotment No. 1354-A, the present location of the Arlee Pow-wow ground. A letter to Mr. Lozeau provided him with
* research conducted by Mrs. Rhonda Camel, Rights Protection Specialist. This letter was dated June 28, 1983, and a copy will be found attached to this cover.

* The June 28th letter states that Mr. Lozeau had inherited an undivided interest in four allotments. It also states that compensation was
* made in the purchase of Mr. Lozeau's interests by the Tribes. Only two matters were left undecided. * The first is being handled as a Statute * of Limitations Case on Allotment No. 1610 (Case P13-203-1461) to see if a Secretarial Transfer was legally handled. The second matter refers to Allotment No. 2891 for an erroneous mineral entry made in the 1950's that reduced the size of the parcel from 160 acres to 139.62. An Administrative decision is to be made by the Superintendent on this matter. Mr. Lozeau may have an interest based on a decision by the Superintendent.

Mr. Lozeau was informed that the Agency records showed that Mr. Lozeau "consented to sale of his interests and, that in all cases, received just compensation for these sales." Please review our letter of June 28, 1983, included with this memorandum.

Mr. Lozeau's question of a peculiarity in the Probate of Alice Lozeau's Will is not understood by this office. Probate records show that he did receive the house and personal property according to Alice's Will. A copy of Alice's Will and Probate is included for your information.

The allegation concerning Mr. Lozeau being kept from his inheritance is perplexing. To our knowledge, two houses on Allotment No. 2891 have been lost to fire. It is assumed that one of these two dwellings was the house Willed to him. As this house no longer exists, it would appear that Mr. Lozeau no longer has a legal claim to residing on said property.

The remaining allegation concerns the fact that Mr. Lozeau's recent mining claims on file with the County Clerk and Recorder's office are not recognized by the BIA or Tribes. Mining claims on forested land held in trust by the United States Government are considered to be invalid. A copy of the decision of the appeal on mining claims located in part on Allotment No. 2891 is included for your information.

After reviewing this memorandum and attachments please forward to Mr. Robert J. Brooks, Assistant U.S. Attorney, located at 167 Federal Building, Butte, Montana 59701.

Attachments

cc: Billings Area Director

RIGHTSPROTECTION:ESCHALLOCK:gkm:06:06:85
bcc: Supt's chrono
Rights chrono
Subject file

THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION
P.O. Box 278
Pablo, Montana 59855
(406) 675-2700
FAX (406) 675-2806

Joseph E. Dupuis - Executive Secretary
Vern L. Clairmont - Executive Treasurer
Bernice Hewankorn - Sergeant-at-Arms

TRIBAL COUNCIL MEMBERS:
Rhonda R. Swaney - Chairwoman
Michael T. Pablo - Vice Chairman
Carole J. Lankford - Secretary
Henry "Hank" Baylor - Treasurer
Donald "Donny" Dupuis
Michael Durglo, Jr.
Mary Lefthand
Wm. Joseph Moran
Elmer "Sonny" Morigeau
Gary Stevens

December 4, 1997

Mr. Thomas Lozeau, Jr.
P.O. Box 294
Ronan, Montana 59864

RE: Your claim to 1/5 interest in Allotment 1610A

Dear Mr. Lozeau:

I have reviewed the materials you have provided me, as well as those provided at your request by the Division of Lands pertaining to your claim of interest in Allotment 1610A. That record demonstrates that to prosecute your claim would involve an extensive expenditure of resources with a very slim possibility of success, even at the threshold. I discussed this matter with the Tribal Council on December 3, 1997 at which time the Council decided not to provide you with legal representation. This decision in no way lessens your right to personally pursue any claim you believe you may have.

Sincerely,

John B. Carter
Tribal Attorney

cc: Tribal Council
Sam Morigeau, DNRC
Kay Neiss, DOL
chrono:rrc:wp6:loze1610

EXECUTIVE DIRECTOR
John E. Echohawk

LITIGATION MANAGEMENT COMMITTEE
K. Jerome Gottschalk
Yvonne T. Knight
Mark C. Tilden

ATTORNEYS
Walter R. Echo-Hawk
Tracy A. Labin
Melody L. McCoy
Don B. Miller
Steven C. Moore
Donald R. Wharton

LAW OFFICE ADMINISTRATOR
Clela A. Rorex

DIRECTOR OF DEVELOPMENT
Mary Lu Prosser

GRANT WRITER/EDITOR
Ray Ramirez

Native American Rights Fund
1506 Broadway, Boulder, Colorado 80302-6296 • (303) 447-8760 • FAX (303) 443-7776

WASHINGTON OFFICE
1712 N Street, N.W.
Washington, D.C. 20036-2976
(202) 785-4166
FAX( 202) 822-0068

ATTORNEYS
Keith Harper
Lorna K. Babby

ANCHORAGE OFFICE
420 L Street, Suite 505
Anchorage, AK 99501
(907) 276-0680
FAX (907) 276-2466

ATTORNEYS
Lawrence A. Aschenbrenner
Heather R. Kendall-Miller

Website: www.narf.org

July 19, 2001

Mr. Thomas A. Lozeau
P.O. Box 294
Ronan, Montana 59864

**Re: Request for Assistance**

Dear Mr. Lozeau:

The LMC appreciates your taking the time and effort on July 17, 2001 to visit with us in Boulder, Colorado, on an issue of obvious importance to you

As we discussed, because the Salish and Kootenai Tribes now claim ownership of the land you seek to recover, any effort to regain the disputed land would likely involve challenging the Tribes' ownership. NARF has a long standing general policy of declining requests for assistance that would involve Indian versus Indian disputes. Among other things, such cases might require us to challenge Indian law principles which we have fought to secure for Indian people and Nations over the last 30 years. We, therefore, decline to accept your request for assistance.

We also discussed several places you might call to try and obtain representation. These include contacting the attorneys whom the Tribes recommended to you, the Indian Law Clinic at the University of Montana, Robert Peregoy who is a former NARF attorney and is now in private practice in Ronan (406-675-2530), Jeanne Whiteing (303-444-2549), Thomas Fredericks (303-l673-9600), and the Indian Dispute Resolution Service Center (916-447-4899) if mediation or arbitration is an option.

With kindest regards,

Mark C. Tilden
Litigation Management Committee

FLATHEAD NATION

THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION
P.O. Box 278
Pablo, Montana 59855
(406) 675-2700
FAX (406) 275-2806
E-mail: csktcouncil@ronan.net

Joseph E. Dupuis - Executive Secretary
Vern L. Clairmont - Executive Treasurer
Leon Bourdon - Sergeant-at-Arms

TRIBAL COUNCIL MEMBERS:
D. Fred Matt - Chairman
Jami Hamel - Vice Chair
Carole J. Lankford - Secretary
Lloyd D. Irvine - Treasurer
Darryl A. Dupuis
Margaret Goode
S. Kevin Howlett
Mary Lefthand
Elmer "Sonny" Morigeau
Ron Trahan

August 29, 2001

Mr Thomas Lozeau, Jr.
P. O. Box 294
Ronan, MT 59865

Re; your claimed partial interest in Allotment 1610A, near Arlee,

Dear Tom,

You have done an exhaustive job of compiling information in an effort to support your claim of a partial interest in Allotment 1610A, located near Arlee, MT. The Tribes have provided you assistance in obtaining records and advice and the Council has listened to your claim several times over the years. We have concluded that if you have any claim, it may in fact be against the United States and not the Tribes. To that end, we have made contact with Native American Rights Fund on your behalf and supported your travel and discussions with NARF attorneys. It is my understanding that NARF has informed you that they would not undertake representation of the claim you believe that you have. The Tribes will provide you no further assistance on this matter either. However, if you believe that you do have a claim you are free to obtain legal assistance from the private sector.

Sincerely,

D. Fred Matt

D. Fred Matt, Tribal Chairman

cc Tribal Council members
Rhonda Swaney, Director, Natural Resources Dept.
Dan Decker, Managing Attorney, Legal Dept.

CONFEDERATED SALISH & KOOTENAI TRIBAL LEGAL DEPARTMENT
RECEIVED
SEP 18 2001
Time in: 10:40 am
By: SC

December 12, 2001

Stanley Speaks, Northwest Regional Director
Bureau of Indian Affairs
911 NE 11th Avenue
Portland, Oregon 97232

Dear Mr. Speaks:

I have an issue that requires your attention immediately. In 1950, the Bureau of Indian Affairs transferred my father's interest in tract 203 1610-A to Clara Kenean Dumontier by a Secretarial Transfer of Inherited Interests. My father did not consent to this transfer as shown by the attached copy of a letter dated February 7, 1950 from Superintendent C.C. Wright to Paul Flickinger, Billings Area Director. Since then, such Secretarial Transfers that occurred without the owners consent have been deemed to be invalid. I have repeatedly contacted our Tribe and the Bureau of Indian Affairs in order to get this matter resolved. Each time I have approached someone to look at this, the matter has been brushed aside. I am afraid that time will run out for resolving this matter if I keep getting put off.

In a letter signed by you in 1997, the matter was looked at and you assured me that you would transfer the matter to the Washington D.C. office so that they could make a decision as to how they will handle the Secretarial Transfer Claims. I have not heard from you or anyone else since. I need to know what the next step is for me to take to resolve this matter. Please correspond with me as soon as possible as time is continuing to toll. I have sufficient paperwork to assist you in providing help for me. I have left a copy of some of my records with your Realty staff at the Northwest Regional Office. I need you to outline exact steps for me to take so that I can see some action on your part and have my father's interest in 1610-A returned to his heirs.

Sincerely,

Thomas A. Lozeau Jr.

Thomas A. Lozeau, Jr.

# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Northwest Regional Office
911 N.E. 11th Avenue
Portland, Oregon 97232-4169

IN REPLY REFER TO:

DEC 20 2001

Mr. Thomas A. Lozeau, Jr.
P.O. Box 294
Ronan, MT 59864

Dear Mr. Lozeau:

Thank you for your letter of December 12, 2001, pertaining to Statute of Limitations Claim P13-203-1461. You reference our December 16, 1997, letter wherein we indicated that we were referring a Secretarial Transfer Claim to our Washington, D.C., office so that they could make a decision as to how to handle this type of claim. A copy of our letter is enclosed for your reference. As indicated on the second page, a copy of the letter was sent to the Office of Trust Responsibilities. To date we still have not received a response.

The Secretarial Transfer, Forced Fee Patent, Rights-of-Way, and certain other categories of claims that were filed under the Statute of Limitations Program are nationwide in scope and so the Secretary's office must be the one to issue guidance on how to handle them. By copy of this letter we are once again forwarding our earlier letter to our D.C., office and asking them to establish and disseminate a policy on Secretarial Transfer Claims.

We regret that we are unable to resolve the ownership problem for Flathead Allotment 1610-A, but as soon as we hear from our Central Office we will let you know their determination. If you have any questions, please feel free to contact Ron Appelbaum at (503) 231-2237.

Sincerely,

Northwest Regional Director

Enclosure
cc: Assistant Secretary - Indian Affairs, Attn: Office of Trust Responsibilities/Larry Scrivner
Superintendent, Flathead Agency

THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION
P.O. Box 278
Pablo, Montana 59855
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Lloyd D. Irvine - Treasurer
Joel A. Clairmont
Margaret Goode
S. Kevin Howlett
Mary Lefthand
Elmer "Sonny" Morigeau
Ron Trahan

09/30/2002

Mr. Thomas A. Lozeau Jr,

The Rights Protection Office has exhausted all its resources and cannot provide any more direct assistants to you in your efforts to address your Alottment 1610A Land issues.

And cannot provide anymore individual Indians services to you.

If you have any question please feel free cal me at (406) 675-2700 ext.1076

Thank you

Francis Auld

Francis Auld
Tribal Preservation Assist/Rights Protection

George - Titles & Records
Flathead

MAR 17 2004

Real Estate Services
BCCO 04327

OPTIONAL FORM 99 (7-90)
FAX TRANSMITTAL # of pages ▶ 1

| | |
|---|---|
| To Michele Hensel | From Jonathan for Ed Demery |
| Dept./Agency BLA Northwest LTRO | Phone # 202-208-7737/5026 |
| Fax # 503-231-6715 | Fax # 202-219-1065 |

NSN 7540-01-317-7368 5099-101 GENERAL SERVICES ADMINISTRATION

The Honorable Denny Rehberg
Member, United States House
of Representatives
950 North Montana Avenue
Helena, Montana 59601

Dear Congressman Rehberg:

Thank you for your letter of December 1, 2003, on behalf of Mr. Thomas A. Lozeau, Jr., who provided you with a copy of his letter to Mr. Ernest "Bud" Moran, Superintendent, Flathead Agency, and copies of other documents relating to his claim of interest in Allotment 1610A. We apologize for the delay in our reply.

Mr. Lozeau's claim is a statute of limitation case (No. P13-203-1461) under 28 U.S.C. 2415. He has contacted our Northwest Regional office (Region) on two occasions regarding this matter. Please find enclosed correspondence from the Region to Mr. Lozeau.

Congress and the Department of the Interior (Interior) attempted to resolve the problems associated with claims arising from Secretarial Transfers through the enactment of 28 U.S.C. 2415 and programs established by the Interior. However, as evidenced by Mr. Lozeau's and our Region's letters, not all claims have been or can be addressed or resolved under 28 U.S.C. 2415 to the satisfaction of the claimant.

Please do not hesitate to contact us if you have further questions.

Sincerely,

/S/ Brian J. Pogue

Acting Director, Bureau of Indian Affairs

Enclosures

Copy to your Washington office

cc: Regional Director, Northwest Region w/ incoming
Superintendent, Flathead Agency
bcc: BIA 220 Surname:220 Chron:200 RF:101A (BCCO 04327):120
BIA 220:EDemery:X5026:03/09/04 K:\Realty\Bcco\2004\BCCO 04327 Rehberg Lozeau.wpd

This letter, unsigned nor created by me is what Tribal Council and Tribal Legal Dept. used to issue me letter dated May 17, 2007 which was hand delivered to me between 6-7 PM on that date.

CS & KT
Tribal Council Chairman
P.O. Box 278
Pablo, MT 59855

Thomas Alfred Lozeau Jr.
P.O. Box 294
Ronan, MT 59864
May 15, 2007

I never formally presented this or any other document for them to take any action on.

Mr. James Steele, Jr.

Following is a letter that I wrote in order to sum up matters concerning the Gabriel Bighorn-Allotment 1610-A. This Allotment is located in Lake Co at Township 16N, Range 19W, Section 07, in the SE1/4 of the NE1/4, containing 40 acres.

**Secretarial Transfer Settlement Agreement**
**Terms of Agreement**

1. House and acreage of equal value and amount of Gabriel Allotment.

2. Lot located at 401 Apache Home sites. West ½ Lot #26 located in the Township 20N, Range 20W, E ½ of the NE 1/4 of Section 1, P.M.M., Lake Co., MT. containing 0.43 acres more or less. Surface and Subsurface, lot is to be fenced. Pache is where I reside.

3. Total compensation broke down as follows, for the amount of $51,600.00
   a. $30,000.00 September 01, 1950 to present date.
   b. $21,600.00 My personal time at $100.00 per month beginning May of 1989 to the present date.

4. If and when the terms stated in 1-3 above are met, I will then sign and date a Quit Claim Deed for the Gabriel Bighorn Allotment 1610-A containing 40 acres S.O.L.C. P13-203-1461.

Sincerely,

I don't know who created this document, was it Chairman Steele or Ranald?

Thomas Alfred Lozeau, Jr.
UO-5953

Tribal Council meeting Held May, 15, 2007 does not show this being Presented to Tribal Council for Motion and Approval.

THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION
P.O. BOX 278
Pablo, Montana 59855
(406) 275-2700
FAX (406) 275-2806
www.cskt.org

Joseph E. Dupuis - Executive Secretary
Vern L. Clairmont - Executive Treasurer
Leon Bourdon - Sergeant-at-arms

May 17, 2007

**TRIBAL COUNCIL MEMBERS:**
James Steele, Jr. - Chairman
Carole Lankford - Vice Chair
Lloyd D. Irvine - Secretary
Ron Trahan - Treasurer
Joe Durglo
Mike Kenmille
Steve Lozar
Jim Malatare
Reuben A. Mathias
Sonny Morigeau

Mr. Thomas Lozeau, Jr.
P.O. Box 294
Ronan, Mt. 59864

Re: Alleged claim of partial interest in Allotment 1610-A

Dear Mr. Lozeau,

Please consider this letter to be the final response from the Confederated Salish and Kootenai Tribes concerning your alleged claim to a partial interest in Allotment 1610-A. As you are well aware, through the years the Council has directed a significant amount of time and resources toward researching your claims and suggesting possible avenues of recourse for you.

Our research has left us with the firm opinion that the Confederated Salish and Kootenai Tribes bear no liability to you concerning your claims related to Allotment1610-A.

We are aware that you have sought assistance from the State of Montana and the United States concerning your claims against the tribes, all to no avail. Despite your efforts, we have continued to listen to your concerns.

However, at this time we wish to notify you that the Council now considers this matter closed and will no longer entertain your claims concerning allotment 1610-A. We cannot prevent you from seeking recourse in some other forum but at this time, we consider this matter closed.

Sincerely,

James H. Steele, Jr., Chairman
Tribal Council

CC to Council

Resolution 85-28 Authorizes purchase of Allotment 1610-A which is Secretarial Transfer case under authority of Statute of Limitations 28 USC 2415 published in the Federal Registry 03-30-83 *
Claim P13-203-1461

# TRIBAL COUNCIL MEETING MINUTES OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD INDIAN NATION, MONTANA

Volume 07 Number 55 — Held: May 24, 2007 *
Council Chambers, Pablo, MT — Approved: June 5, 2007

**MEMBERS PRESENT**: James Steele, Jr., Chairman; Lloyd Irvine, Secretary; Ron Trahan, Treasurer; Sonny Morigeau; Michel "Mike" Kenmille; Joe Durglo; and Steve Lozar.

**MEMBERS ABSENT**: Carole Lankford, Vice-Chairman (Native American Fish and Wildlife Service Meeting); Jim Malatare (ITMA); and Reuben Mathias (Sick Leave).

**OTHERS PRESENT**: Jane Clairmont, Office of Administration and Budget; Leon "Blue" Bourdon, Jr., Sergeant at Arms; Renee Pierre, Recording Secretary; and Abby Dupuis, Recording Secretary.

The meeting was called to **order** at 9:06 a.m. Quorum established.

The meeting was opened with a **prayer** by Steve Lozar.

The **Tribal Council Meeting Minutes** for May 10, 2007 were presented for approval.

**MOTION** by Lloyd Irvine to approve the Tribal Council Meeting Minutes for May 10, 2007, with corrections. Seconded by Sonny Morigeau. Carried, unanimous (7 present).

James gave an update on Shane Morigeau's donation request.

James asked who was going to Lapwai for bison hunting meeting.

Lloyd asked about Phillip McDonald's land issue. Council asked Jane to have Lands come in and give an update.

**MOTION** by Lloyd Irvine to approve the Tribal Council Meeting Minutes for May 10, 2007, with corrections. Seconded by Sonny Morigeau. Carried, unanimous (7 present).

The **agenda** was presented for approval.

**MOTION** by Lloyd Irvine to approve the agenda, with additions. Seconded by Ron Trahan. Carried, unanimous (7 present).

* • **Thomas "Sonny" Lozeau**, Tribal Member, discussed a land issue. Sonny requested verification and clarification about the letter dated May 17, 2007, he received from Council. Sonny read the letter for the record. Tom asked who was involved in writing the letter. Sonny wanted a letter sent verifying involvement in the letter writing. **Chairman Steele** stated Sonny's * issue (secretarial transfer) is with the Federal Government and not with the Tribe. **Steve Lozar** * commented on Secretarial transfer issues.

Resolutions 85-28 dated 11-09-84, 94-15 dated 10-19-93
203 23325 Warranty Deed 11-27-84 Voids Sale
Allotment 1610-A contains Encumbrance 803 dated 09-01-50

THE CONFEDERATED SALISH AND KOOTENAI TRIBES
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Jim Malatare
Reuben A. Mathias
Sonny Morigeau

May 24, 2007

Mr. Thomas Lozeau, Jr.
P.O. Box 294
Ronan, MT 59864

5-15-07 Proposal

Dear Mr. Lozeau,

Please accept this letter as confirmation that the Tribal Legal Department was involved with the preparation and review of that certain letter dated May 17, 2007 concerning your ongoing claim of a partial interest in Allotment 1610-A. I do confirm that I met with the Chairman of the Tribal Council concerning your most recent demand for compensation and your claim in general. We discussed the issues and he requested a letter be drafted to finally address the matter, (including your most recent demand). I prepared the letter for the Council's review and it is my understanding that Council did in fact review and approve the letter prior to your receipt. This approval, among other things indicated a denial of your most recent demand. I believe that it was Council's intent to consider the matter completely closed and as such, I too will consider the matter closed.

Sincerely,

Ranald McDonald
Managing Attorney

cc. Tribal Council

THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION

TRIBAL DEFENDERS OFFICE

**Managing Attorney**
Ann Sherwood

**Civil Division**
Valerie A. Bashor, Attorney
Sheryl Steele, Advocate

**Office Manager**
Delorah Liberty
**Legal Secretary**
Alice Couture

**Criminal Division**
Matthew Pavelich, Attorney
James G. Gabriels, Attorney
Leonard W. Gray, Advocate

June 12, 2007

Thomas Lozeau, Jr.
P. O. Box 294
Ronan, MT 59864

RE: Defender Office representation

Dear Mr. Lozeau:

You requested that our office assist you in obtaining an injunction against the CSKT Tribal Council due to ongoing issues regarding the transfer of your family's tribal lands. We have staffed the matter with the managing and staff attorneys, and determined that our office is unable to provide representation to you in this matter. The Tribal Council has established guidelines regarding the types of civil cases our office may handle, and your legal issue does not fall within the type of case we are allowed to handle.

Sincerely,

Valerie A. Bashor
VAB/

July 20, 1983

Frenchy Burland, Supervisory Realty Specialist

Tom Lozeau

Donovan Boldt, Natural Resources Officer

Tom Lozeau was in; stated that he heard that Cub Dumontier is going to exchange Allot. No. 1610 to the Tribes. Tom said he wants the exchange cancelled because he still owns in this tract and also that this is the Pow Wow Grounds.

I told him that the land (Allot. No. 1610) is not the Pow Wow Grounds and our research (both Rhonda's and my own) show that he has never owner in land where the Pow Wow Grounds is located. I lost my cool to a certain extent, as he has been told this more than once.

He said O.K., I don't want to argue but I lived on the former Pow Wow Grounds and know that I own there.

I just stated to him, "fine" and let things go at present.

See attached letter. Allot. No. 1610 is 1/4 mile east of the Pow Wow Grounds.

RESOLUTION
OF THE GOVERNING BODY OF
THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD RESERVATION

NO. 85-28

AUTHORIZED EXCHANGE OF TRIBAL LAND (T1375) for ALLOTMENT NOs. 1608, 1610-A, and 1610-B

WHEREAS, the Tribal land Acquisition Program for the purchase of timbered and grazing tracts was approved by the Commissioner, Bureau of Indian Affairs on July 28, 1958; and,

WHEREAS, Alfred C. Dumontier, sole owner of the surface rights only in Allotment No. 1608, described as the SW¼NW¼, NW¼SW¼, Sec. 7; Allotment No. 1610-A, described as the SE¼NW¼, Sec. 7; and Allotment No. 1610-B, described as the SW¼NE¼, Sec. 7, ALL in T. 16 N., R. 19 W., containing 160 acres, more or less and appraised at $160,000.00 has offered to exchange this land for Tract T1375, Tribal land (Surface rights only) described as the E½SE¼ Sec. 36, T. 17 N., R. 20 W., containing 80 acres, more or less, and appraised at $82,000.00 and receive the value difference in cash.

WHEREAS, It is to be noted that on those certain deeds executed July 5, 1983 and in a Memorandum Agreement of Settlement dated May 2, 1983 that Clara K. Dumontier agrees to transfer all minerals she previously reserved in the event the land as described above is sold or transferred to the Confederated Salish and Kootenai Tribes.

NOW, THEREFORE, BE IT RESOLVED, That the Confederated Salish and Kootenai Tribes exchange lands with Alfred C. Dumontier at the appraised values and to pay him a cash difference in the amount of $78,000.00, plus $1.00 for land conveyance fees, said funds be authorized for withdrawal from Land Enterprise Account No. 203-T00267 for payment.

NOW, THEREFORE, BE IT FURTHER RESOLVED, That the Bureau of Indian Affairs is directed to prepare the necessary documents to effect the transfer of mineral interest to the Tribes in the above described Allotments when the above land exchange is accomplished.

C E R T I F I C A T E

The foregoing resolution was duly adopted on November 9, , 19 84 , by the Tribal Council of The Confederated Salish and Kootenai Tribes of the Flathead Reservation at a meeting at which as quorum was present by a vote of 8 for, 0 opposed, and 0 not voting, pursuant to authority vested in it by Article VI, Sec. 1, (a) (d), Article VIII, Sec. 1, of the Tribes Constitution amended by Secretarial Order approved January 20, 1960, adopted by the Tribes on April 1, 1960, approved as amended by the Secretary of the Interior on May 5, 1960, pursuant to Section 17 of the Act of June 18, 1934 (48 Stat. 984), the Act of June 24, 1946 (60 Stat. 302), and the Act of July 18, 1968 (PL 9-402).

Joseph Felsman
Chairman, Tribal Council

ATTEST:

Vera L. Chamrock
Executive Tribal Secretary, Tribal Council

Received Office of
Superintendent
NOV 14 1984

5-183
(Sept. 1956)

BRANCH OF ... TITLES & RECORDS SECTION

Land being conveyed was allotted to Gabriel Bighorn
Allottee No. 1610-A and 1610-B

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

203 23269

# DEED TO RESTRICTED INDIAN LAND

THIS INDENTURE, Made and entered into this 9th day of November one thousand nine hundred and eighty-four, by and between Alfred Charles Dumontier, Flathead Enrollee No. 203-U05141, and Glenda R. Dumontier, his wife;

of Ravalli, Montana

Indians ____, parties of the first part, and the United States of America in trust for the Confederated Salish and Kootenai Tribes of the Flathead Reservation;

of Pablo, Montana, party of the second part:

WITNESSETH, That said parties of the first part, for and in consideration of the sum of Exchange of Lands of Equal Value, Plus a Cash Difference of Thirty-Nine Thousand and No/100----------($39,000.00)---------- ~~dollars~~ dollars, in hand paid, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell, and convey unto said party of the second part the following-described real estate and premises situated in Lake County, State of Montana on the Flathead Indian Reservation, to wit:

Surface rights only in Allotment No. 1610-A described as: SE¼NW¼ of Section 7, Township 16 N., Range 19 W., Principal Meridian, Montana, containing 40.0 acres, more or less; and Surface rights only in Allotment No. 1610-B described as: SW¼NE¼ of Section 7, Township 16 N., Range 19 W., Principal Meridian, Montana, containing 40.0 acres, more or less; Subject to all valid existing rights of way of record; Subject to all valid irrigation liens for construction, operation and maintenance charges if any pursuant to law relative thereto; Subject to prior reservations of all minerals described in document filed as BAO No. 203-22005; This conveyance is made in accordance with the provisions of the Act of June 18, 1934 (48 Stat. 984);

together with all the improvements thereon and the appurtenances thereunto belonging. And the said parties of the first part, for themselves and their heirs, executors, and administrators, do hereby covenant, promise, and agree to and with the said party of the second part, its ~~heirs~~ successors and assigns, that they will forever warrant and defend the said premises against the claim of all persons, claiming or to claim by, through, or under them only.

To have and to hold said described premises unto the said party of the second part, its ~~heirs, executors, administrators~~ successors, and assigns, forever.

IN WITNESS WHEREOF, That said parties of the first part have hereunto set their hands

Acknowledgments must be in accordance with the forms prescribed by the State in which the land is situated.

STATE OF Montana
COUNTY OF Lake } ss:

203 23269

BE IT REMEMBERED, That on this 9th day of November, A. D. 19 84 before the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared Alfred Charles Dumontier and Glenda R. Dumontier

to me personally known to be the identical person s who executed the within instrument of writing, and such person s duly acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my seal on the day and year last hereinabove written.

Francis O. Burland

(Title)
NOTARY PUBLIC for the State of Montana, Residing at Arlee, Montana.

My commission expires My Commission Expires 9-22-86

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs
Flathead Agency, Box A
Pablo, Montana 59855

The within deed is hereby approved: 12-06-84
Date

Authority delegated by Secretarial Order No. 2508, 10 BIAM 3, and 10 BIAM 7.

Alonzo T. Spang, Jr.
Superintendent

The within deed is recorded in the Bureau of Indian Affairs in Volume ....., Page ....., Inherited Indian Land Deed Book.

ED ..... r record this ....., 19..... M., and duly ..... page ..... r of Deeds.

May 10, 1985

To Whom it may concern;

This is a statement to verify that Thomas A. Lozeau, Born on June 26, 1919 Enrollment number A02894 has resided in Revais Creek, Arlee and Dixon which is located within the exterior boundries of the Flathead Reservation all or most of his life.

DATED this 10th day of May 1985.

Thomas A. Lozeau Sr.

Thomas A. Lozeau , Sr.

By: Leslie J. Kallowat
Tribal Court Advocate

SUBSCRIBED and SWORN to before me this 10TH day of April 1985.

Linna Spotted Eagle
NOTARY PUBLIC FOR THE STATE OF MONTANA
RESIDING AT: Ronan, Montana
MY COMMISSION EXPIRES: 11-29-86

SEP 16 1985

Sen. Mat Baucus onrabal Sir;

To make thing short the Indain agent and the Tribal council do as they wish and take my land with out my consen I hope that he Mr. Baucus would make a theral investigation.

I m hope to get a fast repaly.

Sincerely

Thomas a Lozeau Sr

10-08-97

Supt. B.I.A.

I request to know if the Act of 5-14-48 (62 STAT 236) was in effect 09-01-50.

I request to know if the Act of 06-25-10 (36 STAT 855) was in effect 09-01-50

Thomas A. Lozeau Jr.
P.O. Box 294
Ronan, Mt.
59864

October 20, 1997

To: Superintendent B.I.A. Bud Moran (Flathead)

From: Thomas A. Lozeau Jr.

Subject: Secretarial Transfer of Allotment # 1610A

1. This tract contains 40 acres.

2. My father inherited 1/5 of this which is 8 acres.

3. My father never consented to this sale.

4. This allotment was conveyed to Clara Keenan Dumontier on 09-01-50 by a Secretarial Transfer of Inherited interests.

5. On 11-09-84 the Confederated Salish and Kootenai Tribes of the Flathead Reservation purchased this tract of land for $2000.00 per acre.

My desire to resolve this issue comes in this formula:

$4000.00 per acre= $32,000.00
compensation of $10.00 per acre per month since 09-01-50 to present which comes to $45,280.00 for a combined total of $77,280.00 + 1/1 ownership in of Surface rights his homesite at Pablo, 401 Pablo Dr.

Sincerely,

Thomas A. Lozeau Jr.

Thomas A. Lozeau Jr.
P.O. Box 294
Ronan, Montana
59864

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Portland Area Office
911 N.E. 11th Avenue
Portland, Oregon 97232-4169

IN REPLY REFER TO:

DEC 16 1997

Mr. Thomas A. Lozeau, Jr.
P.O. Box 294
Ronan, Montana 59864

Dear Mr. Lozeau:

The letter which you sent to Superintendent Bud Moran at the Flathead Agency regarding the Secretarial Transfer of Allotment No. 1610A has been forwarded to this office for a response. Your father inherited an undivided 18/90 interest in this property. The property was subsequently sold without his written consent. Correspondence in the file dated February 7, 1950, indicates that "Thomas A. Lozeau does not object to the sale but does object to his money coming thru the office, where it more than likely will be used for the support of a minor child now living with her mother, and former wife of Thomas A. Lozeau. We have been unable to obtain an answer from him in writing. We see no reason for delaying completion of this case awaiting further word from him." The sale was subsequently approved without his written consent. This type of transfer is referred to as a Secretarial Transfer, or a Sale Without Full Consent. At the time that the conveyance occurred it was believed that the Secretary could approve such transfers. Superintendent Moran informs us that payment was made to your father's account for the value of his interest in the property. 9 years later 4 $ 99 12.37

The property was conveyed to Clara Keenan Dumontier on September 1, 1950, and a subsequent transfer resulted in the acquisition by the Confederated Salish and Kootenai Tribes of the Flathead Reservation on November 9, 1984. You indicate that you desire to resolve this issue for $77,280.00. You arrive at this amount by taking the 8 acres your father did not convey (18/90 of 40 acre tract) and multiplying this by $4,000 per acre. Additionally, you want compensation of $10.00 per acre per month since September 1, 1950 to the present time ($45,280).

At the present time we are waiting for direction from our Washington, D.C. office as to how to handle the Secretarial Transfer claims. Nationally, only one such case has gone to court. The U.S. Supreme Court (United States v. Mottaz, No. 85-546) decided the case on June 11, 1986, holding that an action for an allotment sold without the consent of an allottee, where the land is sold to the United States, is an action under the Quiet Title Act and the statute of limitations begins to run when the allottee learns of the sale. The district court held that Mottaz's cause of action was barred by the statute of limitations because she was aware of the sale in 1954 and did not sue within six years as required by law. The Eight Circuit reversed holding that if the sale of

the land was void, the claim could not "accrue" in six years since Mottaz had never really lost her title. The Supreme Court agreed the action was proper under the Quiet Title Act and was therefore barred by the Statute of Limitations. Under the Quiet Title Act, the statute of limitations ran on Mottaz since she arguably knew of her cause of action in 1954, or, the Court said, at the latest, by 1967. The Court did not address the real issue, i.e., that a sale without express consent is void.

If your case was to go to court, we do not know how the court would rule. The statute of limitations (28 U.S.C. § 2415) only permits money damage claims against third parties--not against the United States. (This claim was identified as Claim Number P13-203-1461 under the Statute of Limitations Program). Since the property has been held by the United States in Trust for the Tribes since 1984, money damages probably would not be permitted since the Tribes acquired title. If it was determined that title should never have left your father, his interest could be reconveyed, but since payment had been made, you might have to repay that amount, plus interest. A court could also affirm the sale since payment had been made at the time of the alleged title transfer. Other possibilities could also exist. As you can see, the issue is not straight forward, especially in light of the current title being with the Tribes.

By copy of this letter to our Washington, D.C. office, we are again requesting that they make a decision as to how they will handle the Secretarial Transfer claims. The Bureau does not have funding to pay individual claimants, and even if it did, the Statute of Limitations Program only permits money damage claims against third parties (not against the Government).

Once we receive direction on how to proceed with the Secretarial Transfer claims, we will relay this information to you. Until that time we will not take any action on your claim. If you have any questions, please feel free to contact Ron Appelbaum at (503) 231-2237.

Sincerely,

Portland Area Director

cc: Superintendent, Flathead Agency
Assistant Secretary - Indian Affairs, Attn: Office of Trust Responsibilities/Larry Scrivner

**MEMORANDUM OF CALL**

Previous editions usable

TO: Bud Moran

☐ YOU WERE CALLED BY– ☑ YOU WERE VISITED BY–

Tom Lozeau Jr.

OF (Organization)

P.O. Box [redacted] Ronan, Mt. 59864

☐ PLEASE PHONE ☐ FTS ☐ AUTOVON

☐ WILL CALL AGAIN ☐ IS WAITING TO SEE YOU

☐ RETURNED YOUR CALL ☐ WISHES AN APPOINTMENT

MESSAGE: Ref. letter of 12-16-97 From Portland Area Director. I need to locate Statute of Limitation Claim the number is P13-203-1461. I will stop by Mon. or Tue.

| RECEIVED BY | DATE | TIME |
|---|---|---|
| | 12-24-97 | 10:50 AM |

63-110 NSN 7540-00-634-4018 **STANDARD FORM 63** (Rev. 8-81)
Prescribed by GSA
FPMR (41 CFR) 101–11.6

☆ U.S. GOVERNMENT PRINTING OFFICE: 1981 361-781/40015

June 10, 1998

BIA Superintendent- Flathead

I am requesting a complete copy of my fathers IIM Account jacket.

My father was Thomas Alfred Lozeau. His enrollment number was 203-AO2894. He died 12-04-88. Probate No. IP BI 140A 89.

1. I am most interested in what account Journal Voucher No. 265-49, dated 09-29-59 was transferred out of.

2. When was this account established?

3. a.) Was my father the only one to receive funds out of this account?
   b.) If not, when did the others receive funds from this account?
   c.) When was this account closed?

Thomas A. Lozeau Jr.

Thomas A. Lozeau Jr.
P. O. Box 294
Ronan, Montana
59864

(10)

# United States Department of the Interior

OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS

Field Operations - Flathead Agency
P.O. Box 815
20 Complex Blvd.
Pablo, MT 59855
Phone (406) 275-2825 Fax (406) 275-2826
Tribal Complex # (406) 675-2700 Ext. 1303

TAKE PRIDE IN AMERICA

February 22, 2008

Thomas A. Lozeau, Jr.
PO Box 294
Ronan, MT 59864

RE: Allotment 1610A - Statute of Limitations Claim P13-203-1461 * 07-06-83

Dear Mr. Lozeau:

You presented the following question in your correspondence received by our office on February 11, 2008:

*Under what Legal Authority can the CSKT purchase Allotted Lands currently Under U.S.C. 2415 statute?* * Tribal Resolution 85-28 dated Nov. 9, 1984

Please be advised that 28 U.S.C. 2415 is not a conveyance (purchase/sale) authority for any Indian tribe. The Bureau of Indian Affairs identified the Secretarial Transfer of your father's inherited interest as a Statute of Limitations (28 U.S.C. 2415) claim under case number P13-203-1461. I have asked the BIA, Northwest Regional Office to provide us with a current Department contact name and number. I will forward to you that information as soon as I receive it.

Sincerely,

Debra L. DuMontier
Fiduciary Trust Officer

cc: BIA, Superintendent, Flathead Agency

5953

11

# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Northwest Regional Office
911 N.E. 11th Avenue
Portland, Oregon 97232-4169

TAKE PRIDE IN AMERICA

IN REPLY REFER TO:
Northwest Realty Officer

FEB 25 2008

TO: Superintendent, Flathead Agency

FROM: Northwest Regional Realty Officer

SUBJECT: Statute of Limitation Claim, Thomas A. Lozeau, Jr.

We have reviewed the Statute of Limitations Claim (28 U.S.C. §2415) file regarding the sale of tract (203) 1610-A, and MT 1610 –A, to the Confederated Salish Kootenai Tribes (Tribes). A condensed version of that file was forwarded to the Director, Bureau of Indian Affairs by memorandum dated January 26, 2004. The memorandum concluded that since the Department still has not made a determination as to what they are going to do with Secretarial Transfers, and other issues, Mr. Lozeau, Jr. will not be offered a satisfactory solution. At this date, we have not been informed by the Department on how theses issues can be resolved.

This tract became the subject of a Sectio 2415 claim as indicated by memorandum dated 07/06/1983. The original case number was P 13-203-1335. The subject is now referred to as case number P 13-203-1461

You indicated that Mr. Lozeau asked by letter:

"Under what legal authority can the CSKT purchase allotted lands currently under USC 2415 statute? I would like a response within 14 working days?"

We need to have copies of certain records from the Flathead Land Titles and Records Office in order to have a clearer assessment of this matter. Please forward copies of the following documents to us for our review: (203) 803; (203) 23269; and, (203) 22894.

By copy of this memorandum to the Washington D.C. office, we request that they inform us as to the status of Secretarial Transfer claim procedures.

If you have any questions, please phone Alida Gulley at (503) 231-2237.

cc: Director, Bureau of Indian Affairs
Attn: Eufrona Snyder

RECEIVED
MAR 04 2008
BUREAU OF INDIAN AFFAIRS
FLATHEAD AGENCY

**United States Department of the Interior**
**Bureau of Indian Affairs**
**Flathead Agency**
**Office of the Superintendent**
P.O. Box 40
Pablo, Montana 59855

TAKE PRIDE IN AMERICA

APR 19 2010

Mr. Thomas A. Lozeau Jr.
PO Box 294
Ronan, MT 59864

Dear Mr. Lozeau Jr.,

In response to your March 22, 2010 letter, you asked this office to answer questions pertaining to the position taken by the Confederated Salish and Kootenai tribes on the Cobell case. However, these questions will need to be addressed by the tribes. This office is not in the position to speak for the tribe on this matter.

Your second letter and attachments will be sent to the Northwest Regional Office for the review of Tribal Resolution 85-28, Warranty Deed 203-23325, and encumbrance 803 upon Allotment 1610-A as requested. I will contact you when I received a response.

The notebook you provided has been transmitted to Ms. Teresa Wall-McDonald, Tribal Lands Department Head as requested.

If there are other questions that I may help with, please contact me.

Sincerely,

Julian C. Courville
Superintendent

No response to date.
09-12-13
Thomas A. Lozeau Jr.

SENATE JUDICIARY
Exhibit No. 24
Date: 2/16/15
Bill No. SB262

# Hex" QUEST PES

GOOD MORING TO ALL. HI MY NAME IS Jocko Stevens of Kendrick
I AM DIRECT DECENDANT OF CHIEF CHARLOT HEAD
CHIEF OF THE BITTERROOT SALISH. THAT CARED FOR HIS
TRIBE. WHOM WAS REPLACED BY ARE TRIBAL CONSTITUTION I AS MY GREAT GREAT GRANDFATHER. I STAND
FOR ARE PEOPLE. WHOM HAVE NO VOICE AND NO SAY SO.
I AM THE TRUTH BRINGER
I AS A TRIBAL MEMBER AND LANDOWNER THAT HAS
~~SECRETIN~~ WATER RIGHTS. I AM NOT FOR ~~AGAINST~~ THIS WATER COMPACT
IF THIS WATER COMPACT PASSES. I WILL NO LONGER BE
ABLE TO GROW MY CROPS THAT HELP SUSTAIN OUR FAMILY RANCH
ALONG WITH. OTHER FARMS + RANCH THAT ARE NOT TRIBE LEY OWNED

AGAIN I AM ~~OPPOSED~~ NOT IN SUPORT OF THIS WATER COMPACT
I KNOW OF NONE MEMBERS DAMING UP STREAMS. TO KEEP WATER
ON THERE LAND. FOR PERSONAL USE. DRYING UP STREAMS THAT
HAVE HAD A COURSE SINCE THE BEGINING. IF THIS WATER COMPACT
PASSES THERE WILL BE STREAMS AND SPRINGS WILL DRY UP

WE AS TRIBAL MEMBERS HAVE NO SAY SO. IF THIS
WATER COMPACT PASSES. WHAT RIGHTS WILL WE HAVE TO PUT THE DAM
THAT OWN FARM LAND AND RANCHERS HAVE. ARE HANDS
WHERE TIED. WHEN THEY TIED THE WATER COMPACT TO KERR DAM.
REALITY CS+KT TRIBES ARE IN THE PROCESS
OF PUTTING WATER METERS ON TRIBAL HOUSEING. TO SOME
THIS COMPACT IS A GOOD DEAL. TO ME AS A TRIBAL MEMBER
OF CS+KT. THIS IS NOT A GOOD DEAL TO A LOT OF ARE
PEOPLE OLD AND YOUNG. ME WHANT TO PUT KERR DAM TO A VOTE
NOT ALL TRIBAL MEMBERS ARE 100 per cent FOR THE COMPACT

SENATE JUDICIARY

Exhibit No. _____

Date: _____

Bill No. _____

JULY 1855 Treaty Of
Hellgate

FERON FINLEY

POWER IS NOT JUST FOR The TEN COUNCAL MEN TO HAVE SOLEY. LIDEGATEION IT IS. The TEN COUNCAL MEMBERS DO NOT HAVE The FINAL SAY 1/3 OF The ELIGABAL VOTERS. CAN NOT Charge FOR WATER ON RES

this IT IS NOT A good DEAL TO ALL Are PEOPLE. We DON'T HAVE A SAY. BUT 1/3 OF ELIGABLE VOTERS We Are in The process OF GATHERING SIGNITURES TO put The DAM TO A VOTE Are CONSTTUTION GIVES US AS TRIBAL MEMBERS A SAY TO VOTE ON this Are COUNCAL WHAATS YOU PEOPCE TO BELIVE THEM. When they SAY Are Whole Tribe is For this COMPACT. When IN FACT We ARE NOT. The REASON We Are Here AGANST This COMPACT Be CAUSE ~~The~~ ~~Then~~ The DAM IS TIED TO To The WATER COMPACT To BYPASS Are CONSTUTIONAL RIGHT TO VOTE ON important issius THAT Will EFECT MY CHILDERON And GRANDCHILDERON

DARK Money PAID OUT TO REPUBLIC AND DEMICRATS PARTY'S

SENATE JUDICIARY
Exhibit No. 25
Date: 2/16/15
Bill No. SB 262

Sunday, February 15, 2015

Mr. Chairman and Members of the Senate Judiciary Committee:

Please vote in OPPOSITION to SB 262, which goes way beyond simply assuring water for the Reservation. All citizens must have their fair share of water as called for in the Constitution. Only a "NO" VOTE protects water for ALL living in 11 counties west of the Continental Divide (farms, ranches, towns, cities).

IF PASSED, control goes from a State Managed Water Rights System to a small Reservation decision-making group. This bill is an insult and threat to the citizens of Montana undermining political integrity and threatening our personal and social economic well-being, security, and way of life, now and in the indefinite future.

I IMPLORE YOU, OUR HONORED LEGISLATOR ON THE SENATE JUDICIARY COMMITTEE, to PLEASE VOTE NO to SB 262 Monday morning at 8:00 a.m.

Sincerely,

Julie M Dockery

Julie Dockery

Sunday, February 15, 2015

Mr. Chairman and Members of the Senate Judiciary Committee:

Please vote in OPPOSITION to SB 262, which goes way beyond simply assuring water for the Reservation. All citizens must have their fair share of water as called for in the Constitution. Only a "NO" VOTE protects water for ALL living in 11 counties west of the Continental Divide (farms, ranches, towns, cities).

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I IMPLORE YOU, OUR HONORED LEGISLATOR ON THE SENATE JUDICIARY COMMITTEE, to PLEASE VOTE NO to SB 262 Monday morning at 8:00 a.m.

Sincerely,

David O'Brien

Sunday, February 15, 2015

Mr. Chairman and Members of the Senate Judiciary Committee:

Please vote in OPPOSITION to SB 262, which goes way beyond simply assuring water for the Reservation. All citizens must have their fair share of water as called for in the Constitution. Only a "NO" VOTE protects water for ALL living in 11 counties west of the Continental Divide (farms, ranches, towns, cities).

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I IMPLORE YOU, OUR HONORED LEGISLATOR ON THE SENATE JUDICIARY COMMITTEE, to PLEASE VOTE NO to SB 262 Monday morning at 8:00 a.m.

Sincerely,

Nancy O'Brien

Sunday, February 15, 2015

Mr. Chairman and Members of the Senate Judiciary Committee:

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I IMPLORE YOU, OUR HONORED LEGISLATOR ON THE SENATE JUDICIARY COMMITTEE, to PLEASE VOTE NO to SB 262 Monday morning at 8:00 a.m.

Sincerely,

Rick Komenda

Sunday, February 15, 2015

Mr. Chairman and Members of the Senate Judiciary Committee:

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I IMPLORE YOU, OUR HONORED LEGISLATOR ON THE SENATE JUDICIARY COMMITTEE, to PLEASE VOTE NO to SB 262 Monday morning at 8:00 a.m.

Sincerely,

Linda Baldridge

Sunday, February 15, 2015

Mr. Chairman and Members of the Senate Judiciary Committee:

Please vote in OPPOSITION to SB 262, which goes way beyond simply assuring water for the Reservation. All citizens must have their fair share of water as called for in the Constitution. Only a "NO" VOTE protects water for ALL living in 11 counties west of the Continental Divide (farms, ranches, towns, cities).

IF PASSED, control goes from a State Managed Water Rights System to a small Reservation decision-making group. This bill is an insult and threat to the citizens of Montana undermining political integrity and threatening our personal and social economic well-being, security, and way of life, now and in the indefinite future.

I IMPLORE YOU, OUR HONORED LEGISLATOR ON THE SENATE JUDICIARY COMMITTEE, to PLEASE VOTE NO to SB 262 Monday morning at 8:00 a.m.

Sincerely,

Joe Baldridge

~~Additional Documents~~ Exhibit 26
SENATE: Judiciary
Date: 2/16/15
Bill No. SB262

good morning.
Shelley Hendrickson
My name is S.H. I'm a direct decendent of Chief Koostahtah and proud to be of our last Kootenai Traditional Leaders as I stand here Looking at why my people are here today is the same reason Chief Koostahtah was eliminated by the Constitution of 1935, the reason is still the same and This water Compact will bring Our Reserevation to its end, for 2 1/2 years now this is what is putting up Fort wall again and the Wagon burners are Saddling up there War pony's, we the member Ship have been riding in on are war pony's to all the tribal villages, to find out there all to afraide to stand up and Say to Our tribal Council NO MORE! no more sending CPS, tribal police, Lake County, Sanders County, Missoula County to Shake down our young Our Mom's dad's our Foster care Family's are elders, member with no Job's no place to live, this water Compact has now taken even more, from the T-Members Tribal

Additional Documents
SENATE: Judiciary
Date:
Bill No.

~~at last these~~
a chance to tell our tribal council you work ~~for~~ your people and putting KERR DAM with the water Compact, has given even more power to the wrong people, the non members who want this CSKT Reservation to be no more, E.K. who at no time ~~have said~~ showed us a 30 year plan of what the tribal members are going to get, the peoples Voice tribe with ~~to~~ petition ~~to~~ and what a eye opener that was. So we the membership put 2 petitions to gather ~~$~~ and are in the prosess of getting ~~names~~ signatures ~~know~~ to bring the recapture of Kerr dam to the members, as where it should be, to get a vote, and we all know first hand ~~$~~ what happend's to are members we have been in a state of hard ship from the first day we all heard of the water compact, we have member ~~a~~against member, non member against non member, Farmers against Ranchers as so on, Now all this is in ~~the~~ your hands, and as a tribal member with the most to lose when is the Federal goverment going to stand up and

do there job. protect the tribal members from ~~these~~ council and any one else who is useing a constitution to violate the tribal members civil rights!
what all this come down to is the CS+KT have to vote on the Kerr dam recapture of Should we try to take it back. Well lets look back, on what we have done in the past.
where is our Hot spring Resort. where is our Post + Pole yard, this was a fail safe. we own all of the trees, ~~where~~ why would we be building or adding on to two Casinos and loaning them money when they don't stand on there own.
our court system removes children for familys with no real evedence ~~and~~ that can be brought to the table with a report from CPS workers ~~tel~~ that are patted on the back ~~and~~ of a great job from are Tribal Council and looking into this there are few and far between who is brought back to there mom + dad's or guardians and all of this has a Constitution, Rules, Regulations ~~that the~~ our treaty's are all on paper and it don't mean a thing. three word there seat on the tribal council does not guarantee

(1/32)

that this water Compact will be followed so when you all look out past this paper work who will keep these people on the right tract and make them keep there word

Tribal Member UO8938
Shelley Hendrickson
40217 S. Valley Creek Rd
Arlee MT 59821

V.F. says we want you all to aprove this ~~compact~~ water compact, and give the power to the tribes; and they want you to beleave ~~that~~ that we as members all have been heard. we have not been heard. not only have we as tribal members, do not get a say we are put into a in a class of we don't matter.

* treaty-constitutions do need to be followed first befoa we make up new paper work (1972)

the tribe want you to beleave that they themselves, fallow

3-91 - 3-92

~~DO~~ the tribe just says

4-D, water Compact. and CSKT

if this is so great foa the T.M., why was we not more informed,

~~they~~ (~~the tribe~~ our hand Forsed ~~are~~ hand when

we as members of the CSKT have been able to almost take a side on this water Compact but at this point we are on the sid of don't pass this water Compact.

* why all of a sudden are all these people foa the water compact. what have they all

been promest or given to go for a full Change of sides, what aren't we being told.
what has changed.

---

heass is now one of the tribal members biggest lease fight, for tribal members. him a non member will beat out tribal member. for

SH I am a direct ~~decendent~~ descendent of Chief Koostahtah. one of our Last Kootenai Traditional leaders that was Removed from his office and eliminated by Our Constitution of 1935, just as he was for are Indain people I stand here today as a CSKT tribal member ~~[illegible]~~, that with our tribal cancil knowing that we the membership have a on going petition that puts our members before the Council to get a vote on weather we want kerr dam back, or want to have what now & have to say and now the recapture of the dam is in with this water Compact and ~~sign~~. again the paper that our constitution is wrote on has been Changed without Ratafcation of our people

leases to grow hay and have a tribaly own ranch

Michael Herkel

For All Senato

SENATE JUDICIARY 27
Exhibit No. SB 262
Date: 2/16/15
Bill No. SB262

The only thing
We have to Fear
is Fear itself
Do the Right
thing.
Protect our Water
Vote agains this
compact, SB 262.

SENATE JUDICIARY

Exhibit No. 3524

Date: 3/15/25

Bill No. SB 1020

"Draft"

2-16-15

**Draft Letter to Governor Bullock**

SENATE JUDICIARY
Exhibit No. 28
Date: 2/16/15
Bill No. SB262

Dear Governor Bullock,

Thank you for your response to the Flathead County Commissioner's letter regarding our concerns about the proposed CSKT Compact. Unfortunately, your response and the attached legal memorandum by your chief legal counsel still leave our questions, as well as our concerns, unanswered. We believe that you may have misunderstood the questions, intent, and concerns expressed by our letter.

In your letter, you cited three (3) "significant changes" that were made to the Compact during the limited re-opening of negotiations in 2014. However the substance of these changes is insignificant and does not allay our concerns as indicated below:

(1) a 'water delivery entitlement' cannot replace a water right and does not address our underlying concern that the Compact transfers the bare legal title of irrigator water rights and much of western Montana's water to the CSKT;

(2) the new technical team created by the Compact will essentially eliminate the duly elected representatives of the Flathead Irrigation Project, the Flathead Joint Board of Control, because it takes over the day to day operation and management of the project, and

(3) the entire administration program proposed in the compact violates Article IX of the Montana Constitution, in that a constitutional function of the State cannot be delegated to a Tribal government and, that the state cannot make a law that treats citizens of the state differently than other citizens.

In addition, you state that "these changes respond directly to questions raised during the 2013 legislative session and through discussions with stakeholders". However, these cosmetic changes to the Compact reflect neither, and the stakeholders of western Montana were in fact excluded from any meaningful discussions with the Compact Commission.

While we appreciate your legal counsel's effort in responding to our questions, we are disappointed that the arguments used to respond to the legitimate questions we raised are the same arguments used by the Compact Commission over the last two years. Because the Compact Commission's arguments were unpersuasive and led to our questions to you in our first letter, the repetition of the same arguments moves us no closer to resolution.

(1) Off-Reservation Water Rights. The language of Article III of the Treaty of Hellgate grants the Tribes an access right to "take fish...in common with the citizens of the territory". Such an access right has never been held by the United States Supreme Court to convey a water right in any of the legal cases cited by your counsel.[1] Whether or not such water right exists should not be resolved in the forum of a Compact, but should be addressed by the United States Supreme

[1] U.S. v. Winans, 198 U.S. 371 (1905); Washington v. Washington State Commercial Passenger Fishing Vessel Association, 443 U.S. 658 (1979)

Court which ruled in both of the aforementioned cases invoked to justify the claim for off-reservation water rights.

(2) Off –Reservation Water Rights are Not Supported by the Treaty of Hellgate. Again, the Stevens Treaty language did not create a water right out of an access right to fish and such a right is not supported by the Treaty of Hellgate or in case law. First and foremost, the Compact Commission is required to determine the federal reserved water rights of the Tribes, those that derive from a federal reservation of land. The Compact Commission is attempting to expand the doctrine of federal reserved water rights to include "tribal reserved water rights" off the federal reservation, a legally established doctrine that does not exist. Second, Article I of the Treaty of Hellgate ceded 'all right, title, and interest to" the lands so ceded to the United States. In Article II, the Flathead Reservation was explicitly reserved out of those ceded lands by the CSKT to the United States. Finally, the Compact claims a water right for the lower Clark Fork River that is outside of the boundaries of the judicially determined ceded or aboriginal lands, in territory ceded by three other Tribes. Montana, as a state, cannot reinterpret a Treaty to create water rights where none has been reserved or implied; these are matters that should be resolved in a proper legal forum, especially when such a determination will have broad legal precedent across the western United States.

(3) Excessive Water Award. That the Flathead Reservation has more water than other reservations in Montana is irrelevant to the quantification of the federal reserved right necessary to fulfill the purpose of the Flathead Reservation. The Compact Commission failed in its primary duty to determine the purpose of the Flathead Reservation and the volume of water necessary to meet those purposes. It is easy to criticize other calculations when a number has not been quantified by the Compact Commission. What is baffling is that every other tribal compact in Montana quantifies the purpose of the reservation and the water right necessary to fulfill that purpose, including instream flows, but this Compact does not. Importantly, until the State of Montana quantifies the federal reserved water right it is impossible to determine the adverse impact of the Compact on other Montana water users. The reality of this Compact is that it doesn't provide a volume of water so that no one knows what the impact is on other water users in Montana.

(4) Dire Consequences for Flathead County. It should be obvious to Mr. Huff that the Compact's claim for all of Flathead Lake, and instream flows off the reservation with a time immemorial priority date, and inability to quantify the volume of water awarded to the CSKT will have dire consequences to businesses, irrigation, and the economy of western Montana. Changes in the level of Flathead Lake, for example, will affect the amount of ground water development that will be allowed above the lake. The Compact is very clear that irrigation uses will not be protected off-reservation, resulting in 'calls' exercised by irrigators on cities, towns, housing developments, and individuals.

(5) State Settlement Funds. The expenditure of state money on fixing a federal irrigation project is unwarranted, especially if federal funds for irrigation rehabilitation projects already exist and when the Compact itself results in a taking of water rights belonging to irrigators without compensation.

(6) Article IX of the Montana Constitution. The constitutionally required mandate that the State of Montana owns the water for its citizens, and that the state is responsible for water administration cannot be delegated to an Indian Tribe or to any foreign government.

Based on your response to our requests, which reflect the two-year running set of 'talking points' of the Compact Commission, we are disappointed to report that our serious doubts about and questions regarding the Compact remain.

We are convinced that the legal precedent the state is attempting to create in this Compact is inappropriately placed before the legislature, which has neither the authority nor the ability to alter the Montana Constitution, to create a new type of federal water right, to reinterpret a Treaty, nor to govern without the consent of the citizenry.

Sincerely yours,

Philip Mitchell

Flathead County Commissioner

Enclosures

SENATE JUDICIARY
Exhibit No. 29
Date: 2/16/15
Bill No. SB262

CSKT Compact

Ladies and Gentlemen of the Senate Judiciary Committee

My name is Randy Doty. I'm an irrigator from Charlo MT and I'm against the Compact but I'm here to bring up some other things that no one seems to be talking about.

#1 NEPA and the 9th circuit court has already said this has to be done but all these brilliant lawyers in Montana say"no". How many Millions will this cost the State because I'm sure the Tribe will not pay for anything.

#2 MEPA You are putting the cart in front of the horse! You should insist that the State be first not the lawyers or especially not our Attorney General of the State of Montana or the Governor.

#3 Class Action Law Suit This is the one you should think about and how many billions this is going to cost the State of Montana to fight and to pay off the citizens of this State. I do believe it will be trillions.

#4 If you pass the Compact, the State should have to pay 55 Million that the Compact calls for not altering it to the 8 million like the Governor wants. If you do, why not alter the rest of the Compact.

I do hope if you decide to pass the Compact and I hope that when we file the Class Action Law Suit we can name all of you personally and take everything you own also.

Thank you,

Randy Doty

Randy Doty
February 16, 2015

SENATE JUDICIARY
Exhibit No. 30
Date: 2/16/15
Bill No. SB262


# Jerry O'Neil
**Independent Paralegal**
**985 Walsh Road**
**Columbia Falls, MT 59912**
**406-892-7602**


February 16, 2015

Here are some items to consider when you are thinking about how to vote on the Water Compact with the Confederated Salish and Kootenai Tribes:

**Article III, B (page 13)**

> **"Abstracts of Water Right**. Abstracts of water right appended to this Compact are a substantive element of this Compact. The language of the abstracts, including all informational remarks, shall control in the event of any inconsistency between the Compact and the abstracts of water right; - - -"

It has been stated by others more versed in this than me, and from what I have read seems to be true, that the abstracts of water right give much more water to the Confederated Salish and Kootenai Tribes than they need and that are necessary for "the purpose of the reservation."

According to item 4, page 24, **Co-ownership of Instream and Public Recreation Water Rights Held by MFWP,**

According to Appendix 28, these water rights include on the Middle Fork and South Fork of the Flathead River, on the Rock Creek Basin and on the Blackfoot Basin.

Under these rights, the CS&K Tribes will have some sort of joint authority to establish, enforce, or jointly exercise these off-reservation water rights. While I doubt anyone really understands what this means, this appears to give some authority over Montana citizens' fishing and recreation rights to a quasi-sovereign government that is not subject to these citizens.

Paragraph i. on page 32: **"A Person who has both an entitlement to the delivery of water from the FIIP and a Water Right Arising Under State Law to serve the same acreage may only protect from Call, by entering into a consensual agreement pursuant to this Article III.G.3, a total quantity of water equal to the lesser of the annual FIIP quota for a given irrigation season, or an Alternate Value, for each acre served, irrespective of whether the water applied to each acre is pursuant to that Person's FIIP delivery right to that Person's Water Right Arising Under State Law."**

This takes away a person's water right and replace it with a "delivery right" of a lesser amount of water.

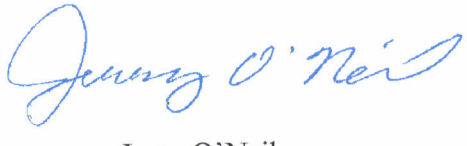
When the reservation was homesteaded under the allotment act pursuant to the Hell Gate Treaty of 1855, the non-Indian homesteaders received fee simple title to their property along with ownership of a water right that accompanied that property. According to ***Federal Power Commission v. Tuscarora Indian Nation***, 362 U.S. 99 (1960), lands held in fee simple within the exterior boundaries of an Indian reservation with no "interest" in them owned by the United

States, are not "within a reservation. This concept explains why the State of Montana is allowed to charge property taxes to the owners of fee simple lands within the reservation.

Therefore it is against the Montana and United States constitutions for the tribes to take away these water rights and replace them with delivery rights without paying the owners just compensation. It is quite likely every owner of a water right on the reservation will bring suit for the taking of these water rights. As an independent paralegal I would love to be involved in this lawsuit.

> From an article by Frank S. Johnson in today's OP-ED, page D3 in the Daily Inter Lake:
>
> "Appendix 9, dated Jan. 28, 2015, of the compact clearly states in Water Right Number "76LJ 30063812 COMPACT," that the CSKT can divert up to 229,383 AC FT from anywhere on the Flathead River, or Flathead Lake, for any purpose at any time of the year. - - -
>
> - - -
>
> "In the commission's 2011 response to the tribes' request for this water, it was termed "supplemental" water. Supplemental?
>
> "The creation of the Flathead Indian Reservation by the government implied the grant of sufficient water to meet the purposes of the reservation. That's the amount the Compact is supposed to quantify. If the water is "supplemental" it is by definition excess to the needs of the reservation. What necessitated the commission supplementing the Salish and Kootenai's other water by giving them rights to more water currently owned by Montana for the benefit of all her citizens?
>
> "Again, why? There has to be a reason; so what is it? The appearance is that the tribes have been given the right to THE critical resource required for future economic development in the Flathead Basin. Why?
>
> "The Confederated Salish and Kootenai Tribes have been granted RIGHTS to consume or lease 128,158 acre feet of that 229,383 acre feet of diverted water. 11,000 acre feet of the 128,158 is earmarked for lease to Flathead County for future development. The compact grants the tribes the right to lease the other 117,158 acre feet of water to anyone on or off the reservation (but within the Flathead and Clark Fork basins). The 2015 lease price for the 128,158 acre feet is $40/acre foot, with the future price to be adjusted annually by the percentage increase in the Consumer Price Index for all Urban Consumers (CPI-U). This has the appearance of a perpetual CSKT "annual revenue stream" (2015 potential is $5,126,320 adjusted by the CPI-U in future years) for which future Montana businesses and citizens will pay. Was this required to fulfill the purpose for which the Flathead Reservation was established? If so, why is it termed "supplemental?"

Since my first year in the Montana Senate was in 2001, I remember hearing about the fall out from the deregulation of the Montana Power Company. I believe passage of this proposed water compact will have far greater fall out than the one then. If I was sitting on this committee I would not vote for it.



Jerry O'Neil

SENATE JUDICIARY
Exhibit No. 32 31
Date: 2/16/15
Bill No. SB262
2-16-15

Honorable Senators of the state of Montana:

I urge you to vote against the CSKT water compact.

- The federal reserved water rights process requires the purpose and quantity of the reservation be defined. Nothing off the reservation.
- Montana Fish, Wildlife, and Parks is by no means qualified to be an entity which recieves a water right through the federal reserved water rights compact process.
- The CSKT compact, in its current form, would also take water rights from individuals without compensation or due process of the law; which violates both the U.S. constitution and the Montana constitution.
- The purpose and quantity of reservation have not been defined.
- The compact would place non-tribal irrigators under the jurisdiction of a management board which they do not have a vote.

In conclusion the CSKT compact does not follow either the Montana or U.S. Constitution in the protection of private property rights. Does not heed the federal reserved water rights, by not defining the purpose and quantity of the reservation. Also involving a state agency to be included does

SENATE JUDICIARY

Exhibit No. _____

Date: _____

Bill No. _____

not hold with the federal reserved water rights. It is also unconstitutional to place citizen's of the state of Montana under jurisdiction of the tribes. Also in conclusion, if the threat of litigation is the only reason to be in favor of the compact; a court system liberal enough to grant the CSKT more than they are already claiming. Would also be liberal enough to re-open every compact in the western United States causing a wholesale takings of private property.

The CSKT Compact is not about settling the water requirements of the reservation, but a political pay back. No less than the integrity of the Montana water court, Montana Constitution, and U.S. Constitution are at stake, along with private property rights through out Montana.

Matt handed in for Will

Respectfully yours
Will Graveley
Rocky Mountain Stockgrowers Assoc.
Avon, MT

#32
~~Additional~~ Documents
SENATE: Judiciary
Date: 2/16/15
Bill No. SB262

Mr. Chairman and committee members

We are here as to voice my opposition to the Water Compact. We feel this is nothing more than a power grab by the federal government. If the federal government controls all of the water, they controll all of us because without water we will be slaves to the tyranny of an out of control federal government.

We address this next comment to the Tribes. Be carefull of what you ask for. We feel that you are being used as a pawn by the federal government to gain control of all of the water . I ask you to consider for a moment who it was that opened your reservation lands to homesteading. Was it the federal government, the state government or the tribal government? Who was it the seized a large portion of your reservation lands and created the National Bison Range and to this day prevents you from managing it? If you think that once the federal government gets control of all of the water and they will let you manage it, I would direct your attention to the last two times they took over part of your reservation.

The control of the water belongs with the state. I have read this Constitution from cover to cover several times this past week. I find nothing in this Constitution that gives this power to the federal government or the tribes except the water on the reservation and they should not be able to control water off of the reservation. I keep coming back to this one little paragraph. The powers not delegated to the United States, nor prohibited by it to the states, are reserved to the states respectively, or to the people.The Tenth Amendment ladies and Gentlemen. I find no such power for the federal government to hold any water rights in trust for anybody. Remember, once freedom is lost, it is lost forever and we cannot get it back. If you want to give up your freedoms individually, you may do so, but please do not give up mine. The blood that has been lost to gain and hold our freedoms would flood this city. Please do not let this have been in vain.

Why now after over two hundred years does the federal government want to gain control of the water. We have gotten along just fine until now without their intervention.

You were elected to protect our rights collectively, please vote against this flawed compact and return the water adjudication back to the state where it belongs.

Thank you
Gerald Cuvillier Beverly Cuvillier

Sanders County Democrat Central Committee Committeeman and Committeewoman
P. O. Box 1421
Trout Creek. Montana 59874

SENATE JUDICIARY
Exhibit No. 33
Date: 2/16/15
Bill No. SB262

Debbie Biolo
432 Dakota Ave
Whitefish, MT. 59937
406-471-8907

2-15-15

Dear Senate Judiciary Committee Members:

I traveled to Helena this morning to plead with you to please continue to scrutinize every section of this compact while you still have the authority and the control of the process here in Montana.. This document is not ready to be transferred on to Washington DC. If you take the easy way out on this important issue and line up behind your party leaders you will have given up your authority and your duty to preserve the constitutionally protected rights of Montanans . This is your only chance to get this right in Montana. And at this point I think you know that it is not right for Montana and not ready to be transferred for consideration in Washington DC.

The State does not have to give up so much to be able to accurately quantify the federally reserved water rights on the reservation. This compact would be unprecedented in it's reach beyond the reservation boundaries. Our State constitution is very clear about the control and administration of water issues.

If you neglect your commitment to Montana and forward this document on to the federal government with so many unresolved concerns, generations of Montanans will look at this session as a betrayal of your oath to serve Montana and protect the rights of your constituents.

I urge you and I plead with you to VOTE NO today on SB262.

I appreciate having the opportunity to speak out and participate in your process.
Respectfully,
Debbie Biolo

RESOURCES:
YouTube CSKT Water Compact : GOOD FOR MT OR A GOV'T GRAB
Western Montana Water Rights https://westernmtwaterrights.wordpress.com
Westernmtconcernedcitizens@gmail.com

SENATE JUDICIARY
Exhibit No. 34
Date: 2/16/15
Bill No. SB262

Deborah M. Wilson
788 Broken Arrow Trail
Kila, Montana 59920

February 15, 2015

Senator Scott Sales
Chairman
Senate Judiciary
Helena, MT 59630

Re: SB 262 CSKT Water Compact

Dear Senator Sales:

Please VOTE NO on SB 262. The CSKT Water Compact violates the equal protection clauses of the Montana and U.S. Constitutions by removing a class of people from the protection of the state of Montana for their water rights and places them under a political board that will be controlled by the CSKT.

Vote NO on SB 262. Thank you for your consideration.

Sincerely,

Deborah M. Wilson

Deborah M. Wilson

SENATE JUDICIARY
Exhibit No. 35
Date: 2/16/15
Bill No. SB262

Alan C. Wilson
788 Broken Arrow Trail
Kila, Montana 59920

February 15, 2015

Senator Scott Sales
Chairman
Senate Judiciary
Helena, MT 59630

Re: SB 262 CSKT Water Compact

Dear Senator Sales:

Please VOTE NO on SB 262. The CSKT Water Compact violates the equal protection clauses of the Montana and U.S. Constitutions by removing a class of people from the protection of the state of Montana for their water rights and places them under a political board that will be controlled by the CSKT.

Vote NO on SB 262. Thank you for your consideration.

Sincerely,

Alan C. Wilson

SENATE JUDICIARY
Exhibit No. 36
Date: 2/16/15
Bill No. SB262

# SANDERS COUNTY
## BOARD OF COMMISSIONERS

January 15, 2015

The Honorable Steve Bullock
Office of the Governor
State Capitol, Room 204
P.O. Box 200801
Helena, MT 59620-0801

Attorney General Tim Fox
Office of the Attorney General
215 Sanders, Third Floor
P.O. Box 201401
Helena, MT 59620-1401

RE: CSKT Reserved Water Rights Compact

Governor Bullock and Mr. Fox:

The eastern portion of Sanders County lies within the Flathead Reservation, and we share a portion of the Jocko and Flathead irrigation districts.

Although the Flathead Joint Board of Control (FJBC) dissolved in 2013, as of 2014 they have since reorganized. FJBC brought forward issues that have not been fully addressed and therefore we feel the negotiations are incomplete. As referenced in the attached FJBC resolution, there are many areas of concern.

The proposed CSKT Reserved Water Rights Compact is so complex, that we are apprehensive about it being administered without all the issues being fully resolved.

We appreciate the opportunity to comment and hope that you consider the unresolved matters.

Sincerely,

Board of Commissioners
Sanders County, Montana

Glen E. Magera, Presiding Officer

Anthony B. Cox, Commissioner

Carol Brooker, Commissioner

Enc: Resolution 2014-4 of the Flathead Joint Board of Control of the Flathead, Mission and Jocko Valley Irrigation Districts.

**RESOLUTION OF THE FLATHEAD JOINT BOARD OF CONTROL OF THE FLATHEAD, MISSION AND JOCKO VALLEY IRRIGATION DISTRICTS**

**RESOLUTION NO. 2014-4**

The Flathead Joint Board of Control of the Flathead, Mission and Jocko Valley Irrigation Districts, at a meeting convened and held on December 30, 2014, at St. Ignatius, Montana, at which a quorum was present and voting throughout, hereby adopt the following:

WHEREAS, the Flathead Joint Board of Control ("FJBC"), comprised of the Flathead, Mission and Jocko Valley Irrigation Districts, represents the irrigated acreage owned in fee which comprises approximately 110,000 acres, or 90% of the acreage contained within the Flathead Irrigation Project ("FIP");

WHEREAS, the CSKT has failed to state the primary purpose of the reservation and to quantify their federally reserved water right;

WHEREAS, in September of 2013 the FJBC set forth its position regarding the Water Compact between the Confederated Salish and Kootenai Tribes, the United States, the State of Montana and the FJBC which had failed to pass the 2013 Montana Legislature, and requested the Montana Reserved Water Rights Compact Commission ("MRWRCC") resume negotiations of the Water Use Agreement ("WUA") contained in the 2013 Compact proposal, and requested the following concerns be addressed:

- The Water Compact may not be used as a vehicle to take Irrigation Project Water Rights or Individual Landowners' Water Rights and transfer them to the Confederated Salish and Kootenai Tribes ("CKST").

- The quantity of water allocated to the FIP in the WUA was significantly less than historical use and was based upon the Hydrologic River Operation Study System ("HYDROSS") model, a model generally used as a planning tool and which is scientifically unsound for making actual allocations of

project water and in-stream flows. Additional operational modeling was requested to address historic irrigation deliveries, extra duty water, stock water and the use of "non-quota" water. Historic data to verify historic use, requested from the BIA via FOIA, has been withheld from the FJBC.

- The Water Compact unlawfully created a Unitary Management Ordinance ("UMO") and Unitary Management Board ("UMB"), comprised of political appointees, to administer water right issues within the FIP and which eliminated judicial review, adjudication and oversight by the Montana Water Court. The UMO and UMB, as a governing body, treated citizens of the State of Montana located in the FIP differently from the rest of the citizens of the State of Montana and disproportionately vested review, adjudication and control over water and irrigation rights and use with Tribal appointed representatives. The Water Compact further directed any appeal from the UMB to an undefined "Court of Competent Jurisdiction".

WHEREAS, upon reopening of negotiations between the United States, the CKST and the State of Montana regarding the Water Compact, the FJBC was intentionally denied a presence in the negotiations;

WHEREAS, on October 8, 2014, the FJBC presented its Position Statement once again identifying the three (3) issues it previously asked the MRWRCC to address in negotiations in order to gain the FJBC's support for a renegotiated Water Compact;

WHEREAS, the FJBC received no substantive response to its concerns;

WHEREAS, on December 12, 2014 Governor Steve Bullock announced an agreement had been reached between the CKST, the State of Montana and the United States as to the Water Compact ("CKST Water Compact"), a final copy of which to date has not been distributed for review;

WHEREAS, contrary to statements made by the Governor and the Attorney General, all indications from the Compact Commission are that the

"renegotiated" Compact does not provide a water right to FIP irrigators, does not provide "historic usage" as required by the Montana Constitution (Article IX.3.1), and further violates Article IX of the Montana State Constitution by imposing the UMO on fee land irrigators within the FIP, thus treating them differently than anywhere else within the State.

NOW THEREFORE, BE IT RESOLVED:

The FJBC, comprised of the Flathead, Mission and Jocko Valley Irrigation Districts, representing the irrigated acreage owned in fee and which comprises approximately 110,000 acres, or 90% of the acreage contained within the FIP, strongly opposes passage by the 2015 Montana Legislature of the proposed CKST Water Compact as drafted, and recommends that irrigator's water rights be adjudicated by the Montana Water Court in a general stream adjudication process because the allegedly "renegotiated" Water Compact:

- Requires individual landowners, irrigators and their representatives and/or agents to relinquish any and all claims to water rights in the FIP, without their agreement or consent.

- Inherently acknowledges the initial Water Use Agreement was flawed with respect to irrigation water allocation and now replaces it with "*adaptive management*", a learning-based management method which implements irrigation water allocation by trial and error, while disregarding historical use.

- The UMO and UMB violate the Montana Constitution and the Constitution of the United States by requiring both Tribal *and* non-Tribal property owners and citizens of the State of Montana who reside on fee land within the Flathead Indian Reservation's boundaries to be governed by a different law of water administration than the rest of Montana.

- Creates a "FIP delivery entitlement statement" of unknown origin, status and legal effect.

- Fails to sufficiently define a "Court of Competent Jurisdiction", thereby creating a judicial nightmare likely to result in different courts issuing conflicting decisions and opinions as to water and irrigation rights and use within the FIP.

DATED effective December 30th, 2014.

The undersigned certifies that the above stated resolution and was passed by a majority/unanimous of the Board Members of the Flathead Joint Board of Control.

Dennis Boone Cole

Wayne E. Blevins

D. Lockey

# Montana State Legislature

2015 SESSION

## ADDITIONAL DOCUMENTS

**Business Page**

**[Signed by Chairman]**

**Roll Call**

**Standing Committee Reports**

**Tabled Bills**

**Fiscal Reports**

**Rolls Call Votes**

**Proxy Forms**

**Visitor Registrations**

***Any other documents, which were submitted after the committee hearing has ended and/or was submitted late [within 48 hours], regarding information in the committee hearing.**

***Witness Statements that were not presented as exhibits.**

Montana Historical Society Archives
225 N. Roberts
Helena MT 59620-1201
2015 Legislative
E-Document Specialist Susie Hamilton

**BUSINESS REPORT**

**MONTANA SENATE**
**64th LEGISLATURE - REGULAR SESSION**

**SENATE JUDICIARY COMMITTEE**

**Date:** Monday, February 16, 2015
**Place:** Capitol

**Time:** 8:00 A.M.
**Room:** 303

**BILLS and RESOLUTIONS HEARD:**

SB 262 - Implement CSKT water rights settlement - Sen. Chas Vincent

**EXECUTIVE ACTION TAKEN:**

**Comments:**

SEN. Scott Sales, Chair

# MONTANA STATE SENATE
## 2015 JUDICIARY COMMITTEE
# ROLL CALL

DATE: 2/16/15

| NAME | PRESENT | ABSENT/ EXCUSED |
|---|---|---|
| **CHAIRMAN, SENATOR SCOTT SALES** | ✓ | |
| **VICE CHAIRMAN, SENATOR JENNIFER FIELDER** | ✓ | |
| **SENATOR DIANE SANDS** | ✓ | |
| **SENATOR ROBYN DRISCOLL** | ✓ | |
| **SENATOR KRISTEN HANSEN** | | ✓ |
| **SENATOR JEDEDIAH HINKLE** | ✓ | |
| **SENATOR DOUG KARY** | ✓ | |
| **SENATOR CLIFF LARSEN** | ✓ | |
| **SENATOR MARY MCNALLY** | ✓ | |
| **SENATOR MARY SHEEHY MOE** | ✓ | |
| **SENATOR NELS SWANDAL** | ✓ | |
| **SENATOR CHAS VINCENT** | ✓ | |
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# MONTANA STATE SENATE
## Visitors Register
## SENATE JUDICIARY COMMITTEE

**Monday, February 16, 2015**
**SB 262 - Implement CSKT water rights settlement**
Sponsor: **Sen. Chas Vincent**

**PLEASE PRINT**

| Name | Representing | Support | Oppose | Info |
|---|---|---|---|---|
| Lyle Whiteman | ~~them~~ myself | | X | |
| Rudolf Jaksich | Myself | | X | |
| Dan K. Olson | " / T.U. | ✓ | | |
| Carolyn Palmquist | Citizens | | X | |
| Marie Holly Palmquist | Citizen of Montana | | X | |
| Dallas Palmer | Me | | X | |
| Diane Speer | Citizens | | X | |
| Andrew Spear | " " | | X | |
| Robert L Starks | NO To the Compact | | ✓ | |
| ROGER STARKEL | STARKEL FARMS INC. | X | | |
| Ken Cornelius | Irrigator | X | | |
| Patrick Lake | Lake Land + Lake Family Farm | X | | |
| Tom Rasmussen | MR RANCH | | X | |
| Doug Johnson | Rancher | X | | |
| Mary Schaal | Dairy Farm Self | X | | |
| Beverly Storer | " " | | X | |
| Art Kelly | Rancher | | X | |
| Michael Huber | Myself, Family, Flathead | | | |
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**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**

# MONTANA STATE SENATE
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**Monday, February 16, 2015**
**SB 262 - Implement CSKT water rights settlement**
Sponsor: **Sen. Chas Vincent**

**PLEASE PRINT**

| Name | Representing | Support | Oppose | Info |
|---|---|---|---|---|
| Brent Jaeger | American Land Council | | X | |
| David Lehrer | | | X | |
| Josh Tankersley | Freedom | | X | |
| Aaron Gams | Myself | X | | |
| Roger Welch | " | | X | |
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**Monday, February 16, 2015**
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Sponsor: **Sen. Chas Vincent**

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| Name | Representing | Support | Oppose | Info |
|---|---|---|---|---|
| Claudia McCready | myself RANCHER | X | | |
| Bruce White | FSBC | | X | |
| Julie White | FSBC | | X | |
| Jennifer Nicholson | RMSG - Ranchers | | X | |
| Christine M. Jasket | FSBC | | X | |
| James V Oswald | LCRC | | X | |
| Donald Jacobs | Cascade | | X | |
| Bruce Elsaesser | | | X | |
| Allen Difert | Self Vet & Farmer | | X | |
| Jamie Iguchi | self | X | | |
| Mark Haag | self | | X | |
| Dorothy C Huff | self | | X | X |
| Bob Tripp | self | | X | |
| Terence J Fox | Montana Multiple Use | | X | |
| Thomas L. Metzler | Kalispell Liberty | | X | |
| Marie F Ryan | Self | | X | |
| Helene Robinson | self | | X | |
| John Shelasky | self | | X | |
| Darlene Gordon | Self Rancher | | X | |
| JILL READ | MYSELF | | X | |
| ALBERT ARNOLD | MYSELF | | X | |
| Patrick Legaud | " | | X | |

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**SB 262 - Implement CSKT water rights settlement**
Sponsor: **Sen. Chas Vincent**

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| Name | Representing | Support | Oppose | Info |
|---|---|---|---|---|
| Chuck Brandt | Rosa | | X | |
| Bruce Wyatt | FSBC | | X | |
| Julie White | FSBC | | X | |
| Sarah Howell | MT Women Vote | X | | |
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**Monday, February 16, 2015**
**SB 262 - Implement CSKT water rights settlement**
Sponsor: **Sen. Chas Vincent**

**PLEASE PRINT**

| Name | Representing | Support | Oppose | Info |
|---|---|---|---|---|
| Lawrence Cnain | Self | | X | |
| Wade Sherrod | Self | | X | |
| Harlan Hansen | Self | | X | |
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**Monday, February 16, 2015**
**SB 262 - Implement CSKT water rights settlement**
Sponsor: **Sen. Chas Vincent**

**PLEASE PRINT**

| Name | Representing | Support | Oppose | Info |
|---|---|---|---|---|
| Bill Koenig | NONE | | strongly | |
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**Monday, February 16, 2015**
**SB 262 - Implement CSKT water rights settlement**
Sponsor: **Sen. Chas Vincent**

**PLEASE PRINT**

| Name | Representing | Support | Oppose | Info |
|---|---|---|---|---|
| NANCY O'BRIEN | SELF | | YES | |
| Teresa Backs | ✓ | | X | |
| Elaine McPherson | ✓ | | X | |
| KEN MATTHIESEN | SELF | | X | |
| Jim Rio | SELF | | X | |
| Brittany Chaffins | Self | | X | |
| Robert Minto | SELF | | X | |
| [illegible] | Forest Farmers Assn | | X | |
| Don Chidester | Montanans | | X | |
| Carol Lyons | Montana citizens | | X | |
| Harold Freidog | SCIP | | X | |
| [illegible] | SELF | | X | |
| Jill Shepherd | self | | X | |

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| Name | Representing | Support | Oppose | Info |
|---|---|---|---|---|
| [illegible] | Self | | X | |
| [illegible] | Self | | X | |
| [illegible] | Plains Rural | | X | |
| Jocko Shane Hendrickson | We the membership | | X | |
| Shelley Henderickson | We the membership | | X | |
| [illegible] | We The Membership | | X | |
| Randy Doty | Self | | X | |
| Kate Pearson | Self + Husband | | X | X |
| Todd Bernhardt | Self | | X | |
| Wayne Blevins | F.I.D. MWRA sec | | X | |
| Rep. Kerry White | HD 64 | | X | |
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**Monday, February 16, 2015**
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Sponsor: Sen. Chas Vincent

**PLEASE PRINT**

| Name | Representing | Support | Oppose | Info |
|---|---|---|---|---|
| WALTER MORRIS | DECREED WATER RIGHTS | | X | |
| Helen Morris | Ranchers | | X | |
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| Name | Representing | Support | Oppose | Info |
|---|---|---|---|---|
| Tim Randell | Self | | X | |
| Jerry Laskody | FJBC | | X | |
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| Name | Representing | Support | Oppose | Info |
|---|---|---|---|---|
| R.C. "Bobby" Lane | Self | | X | |
| FRED HAMMEL | SELF | | X | |
| William FRY/IV | Self/Family | | + | |
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| Name | Representing | Support | Oppose | Info |
|---|---|---|---|---|
| Jerry Gentry | Self | | X | |
| Rachel Nicholson | Self | | X | wanted up. |
| James Gould | Self | | X | |
| | | | | |
| Shirley McHarg | Self | | X | |
| [illegible] | Self | | X | |
| [illegible] | Self | | X | |
| Carol Kinnibergh | " | | X | |
| Daniel Kinnibergh | Self | | X | |
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**Monday, February 16, 2015**
**SB 262 - Implement CSKT water rights settlement**
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**PLEASE PRINT**

| Name | Representing | Support | Oppose | Info |
|---|---|---|---|---|
| Frank Delgado | Lake County | | ✓ | |
| Pat Tully | Lake County | | | |
| [illegible] | lake county | | ✓ | |
| Hertha Lund | Commonsense citizens for CSKT | X | | |
| Megan McNamer | Independent | ✓ | | |
| Joseph E. Oeschger | Independent | | X | |
| Alice M Oeschger | Lake Co. | | ✓ | |
| Bob Gilbert | C.B.U. | | X | |
| CHARLES WOOLLEY | SELF | | X | |
| Roy Vallejo | self St Legislature | | ✓ | |
| Sheila Vallejo | self | | ✓ | |
| Edward Wehagheim | SELF | | ✓ | |
| Deena Baldwin | self | | ✓ | |
| Carl Brooks | SELF | | ✓ | |
| William Howell | " | | ✓ | |
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**Monday, February 16, 2015**
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Sponsor: **Sen. Chas Vincent**

**PLEASE PRINT**

| Name | Representing | Support | Oppose | Info |
|---|---|---|---|---|
| (Kerry Paulson) | | | | |
| Kerry Paulson | self | | X | |
| JOHN EMBRY | self | | X | |
| Sally Edwards | self | | ✓ | |
| Patrick Verlanic | self | | ✓ | |
| George Hudson | self | | ✓ | |
| Susan Cottingham | self | X | | |
| Russell Miller | self | | X | ✓ |
| Verdell Jackson | self | | X | |
| Barbara Ellerman | self | | X | |
| Joann Carroll | self Mineral County Tea Party | | X | |
| Virginia Jamison | self Mineral County Tea Party | | X | |
| Bill Myers | Bayside Senior | | X | |
| Jay Bodner | MCW / MASGD | X | | |
| Mike Mclane | MT FWP | | | X |
| David Manning | self | X | | |
| Amy Seaman | Montana Audubon | X | | |
| Chris Sullivan | self | | X | |
| Pat Cobbe | self & family | | X | |
| Boone Cole | FJBC | | X | |
| Harley Hettick | self - Dixon Melons, Inc. | | X | |
| Susan Webber | HD 16 / Glacier Co / Blackfeet Nation | X | | |
| DAN HAPPEL | SELF | | X | |

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# MONTANA STATE SENATE
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| Name | Representing | Support | Oppose | Info |
|---|---|---|---|---|
| Rex Radtke | Lower Willow Creek Irr. Dist. Flint Creek Water Users Assc | | X | |
| Jay Henderix | Flint Creek Water Users Assc | | X | |
| Abigail St. Lawrence | FJBC | | x | |
| Charlotte Kavanaugh | self | | X | |
| Lynda Osborne | self | | X | |
| David Ortz | self | | X | |
| Rita Hall | self /off-res | | X | |
| JILL SHEPHERD | SELF | | X | |
| Leana McNeme | Self | | X | |
| Sam Still | Missoula Area Chamber of Commerce | X | | |
| Vivian Allen | Self | | ✓ | |
| Timothy McNeme | self | | ✓ | |
| Deborah M. Wilson | Self | | X | |
| Patrick McCain | Self | | X | |
| Karen FAGG | self | X | | |
| Jacob Caryl | MT Farmers Union | X | | |
| Elena Gagliano | Granite County | | X | |
| Shelbi Dantic | MT Conservation Voters | X | | |
| RICHARD MOTTA | RAVALLI COUNTY | | X | |
| DOUGLAS CARPENTER | self | | X | |
| Suselle Billedeaux | CSKT | X | | |
| Celestine Duncan | self | X | | |

**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**

# MONTANA STATE SENATE
## Visitors Register
## SENATE JUDICIARY COMMITTEE

**Monday, February 16, 2015**
**SB 262 - Implement CSKT water rights settlement**
Sponsor: **Sen. Chas Vincent**

**PLEASE PRINT**

| Name | Representing | Support | Oppose | Info |
|---|---|---|---|---|
| John Tobiff | Farm Irrigators | | X | |
| Tom Reeves | OK RANCH | | X | |
| Dena Paugh | Self | | X | |
| Walt Sales | AGAE / Self | X | | |
| John Carter | CSKT | X | | |
| Evelyn Lake | self | X | | |
| Dorothy Bradley | self on Compact Comm | X | | |
| Colleen Coyle | self | X | | |
| Mike Gaffke | Gallatin Irrigators | X | | |
| Bill Slaughter | Beaverhead Co Commission | | X | |
| Tom Kuffel | Hall Hay Producers | | X | |
| William Kleiter | Hall Hay & Crops | | X | |
| Jim Hagendahl | Self | X | | |
| Bob Storer | Ranching | | X | |
| Candace J. West | Self | X | | |
| LARRY DOLEZAL | Self / Hunter / Fisherman | | X | |
| Jim Valentine | self / Hunter / Fisherman | | X | |
| Jim Gould | self / Hunter, etc | | X | |
| JAN HAYES | self / FARMER / RANCHER | | X | |
| Linda Heffernan | homemaker | | X | |
| Debbie Biolo | self | | X | |
| JOHN TROCHMANN | SELF | | X | |

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Sponsor: **Sen. Chas Vincent**

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| Name | Representing | Support | Oppose | Info |
|---|---|---|---|---|
| Patty Stevens | CSKT Council | X | | |
| Lana Frick | / | | X | |
| Susanna Pyron | CSKT COMPACT | | X | |
| Mary Weber | CSKT Compact | | X | |
| Jay Weber | Compact | | X | |
| Jim KUBICHEK | SELF | | X | |
| Matt Graveley | RMSGA & Family | | X | |
| Susan Lake | Lake Farms | X | | |
| Gary D. Brandt | ~~Lake~~ Irrigators | | X | |
| Jeanette M Zanto | husband + self | | X | |
| Ernest Penn | Farmer Irrigator | | X | |
| Marilyn HATCH | Citizen | | X | |
| Alana Rood | Moore Ranch - Granite Co. Mt. | | X | |
| Judy Samuelson | Property Owners St. Ignatius | | X | |
| Margaret A. Mullaly | Self | | X | |
| Rick Jaussen | CSKT | X | | |
| Jason Adams | CSKT | X | | |
| John Harrison | CSKT | X | | |
| Brian Upton | CSKT | X | | |
| Mike Murphy | MWRA | X | | |
| Diane Speer | Citizens | | X | |
| Andrew Speer | citizens | | X | |

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| Name | Representing | Support | Oppose | Info |
|---|---|---|---|---|
| Bernadette Atwin | CSKT | X | | |
| Terry Prouqua | self | | X | |
| Tim Valentine | self | | X | |
| ~~Al E Ud~~ | Self | | X | |
| Joe McDonald | Self | ✓ | | |
| Jake Brown | MTPIRG | X | | |
| Robert McDonald | CSKT | X | | |
| STEVE ZABAWA | ~~CSKT~~ SELF | X | | |
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## Visitors Register
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**Monday, February 16, 2015**
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Sponsor: **Sen. Chas Vincent**

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| Name | Representing | Support | Oppose | Info |
|---|---|---|---|---|
| Hans C. McPherson | Supply Ditch + Farm Bureau | X | | |
| Jim Jacobs | Montana Farmers Union | X | | |
| RIC SMITH | SELF | X | | |
| Steve Curtiss | GLID | | X | |
| Victoria Burkhardt | self | X | | |
| Lyn Baker | Baker Land & Cattle | | ✓ | ✓ |
| DENNIS DUTY | MISSION BAY REALTY | X | | |
| Ken McAlpin | McAlpin Ranch | X | | |
| Jack Leky | Lake Farms | X | | |
| Larry Van Dyke | Van Dyke Farms | X | | |
| Chuck Curtis | Self | | X | |
| Gail Stafford | self | | | |
| LEONARD SHUMSKI | Leonard M. Shumski | | X | |
| GREG HINKLE | Greg Hinkle | | X | |
| CAROLYN PIERSON | Carolyn Pierson | | X | |
| Tim Hughes | MWRA - Self | X | | |
| Jeffrey Todd Tutvo | | | X | |
| CLAYTON SMITH | Self | | X | |
| John Mason | Self | | ✓ | |
| Lynn Mason | Self | | X | |
| Diane Brewer | Self | | X | |
| Charles Knuppel | Self | | X | |

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| Name | Representing | Support | Oppose | Info |
|---|---|---|---|---|
| Roger Rayne | Tucker Crossing Ranch PRWUA MFBF | ✓ | | |
| Roberta A. Stoken | Stoken Ranch | | ✓ | |
| Beverly Horner | Horner Ranch | ✓ | | |
| Jack Horner | Horner Ranch | ✓ | | |
| Mary Strandunn | Comma Grand Farm | ✓ | | |
| Aubyn Curtiss | Self & others | | ✓ | |
| Gina McAlpin | McAlpin Ranch | ✓ | | |
| Dick Erb | Erb Farm | ✓ | | |
| Wayne D Scammon | Wayne D Scammon | ✓ | | |
| Delia Shamsky | Self | | ✓ | |
| Sjaan Vincent | Vincent Ranch | ✓ | | |
| Maccine Scammon | Self | ✓ | | |
| Jennifer Curtiss | self | | ✓ | |
| ROBERT D. PIERSON | SELF | | ✓ | |
| Catherine Vandemoer | MT. Land + Water Alliance | | ✓ | |
| Kristine Evans | SRWRC, Self | X | | |
| Carolyn Beecher | self | ✓ | | |
| Paul Guenzler | Self | ✓ | | |
| Sharon Guenzler | self | ✓ | | |
| Kathy Waring | Self | | ✓ | |
| Dennis Roush | Self | | ✓ | |
| Craig McClure | ~~Self~~, AS IRRIGATOR | ✓ | | |

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| Name | Representing | Support | Oppose | Info |
|---|---|---|---|---|
| DEAN BROCKWAY | IRRIGATOR (Rancher) | | X | |
| Gene Erb | Rancher | | X | |
| DEON T. CARPENTER | Self | | X | |
| Mark Aagenes | Montana TV | X | | |
| GEORGE ALBERDA | SELF | X | | |
| Paula Webster | Self | X | | |
| Jana Clairmont | SELF | X | | |
| Edward McClure | Self | X | | |
| Ken TwoTeeth | CSKT | | | |
| Ada Montague | Franz & Driscoll, PLLP | X | | |
| Dan Salomon | MWD 93 | X | | |
| Wayne Robinson | Self | X | | |
| Shelby DeMars | Self | X | | |
| Andrea Olsen | Self | X | | |
| Gene Ed & Beverly Cuvillier | Self | | X | |
| Shane Morigeau | CSKT | X | | |
| Clayton Matt | CSKT | X | | |
| Carolee Wenderoth | CSKT | X | | |
| Melissa Herabein | RWRCC | X | | |
| Erik Cline | CLINE | X | | |
| Dan Decker | CSKT | X | | |
| Steve Arca | CSKT/Self | X | | |

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Sponsor: **Sen. Chas Vincent**

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| Name | Representing | Support | Oppose | Info |
|---|---|---|---|---|
| Charlene K Kujawick | self | | ✓ | |
| Lloyd Phillips | self/Council | | ✓ | |
| Jim Pugh | Self | | ✓ | |
| Chris Hagar | Self | ✓ | | |
| Jon Metropoulos | BMSGA - Dixon Melons | | X | |
| Rhonda Swaney | CSKT | ✓ | | |
| Holly Franz | Billings Chamber of Commerce Mountain Water Co. | X | | |
| John Crowley | Bitterroot Irrigation | X | | |
| Joel Clairmont | Rancher - CSKT member | X | | |
| Brent Jack | Kalispell MT | | | |
| Julie Dockery | Kalispell / self | | X | |
| Michael Keane | Kalispell MT | | X | |
| Lance Jasper | Quinns Hot Springs | | X | |
| Derek Bees | self Kalispell | | X | |
| Frank Delgatto | Lake County | | X | |
| Jim Berg | My Self | X | | |
| Ron Hepp | self Great Falls | | X | |
| J R Litman | Painted Rocks Water | X | | |
| Joey Jayne | Self - Arlee MT | X | | |
| Jennifer Finley | self Ronan, MT | X | | |
| Adam Haight | Northern Plains Resource Council | X | | |
| | | | | |

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| Name | Representing | Support | Oppose | Info |
|---|---|---|---|---|
| Lloyd Irvine | CSKT | Yes | | |
| Marvie Irvine | CSKT | Yes | | |
| Nakotah Irvine | CSKT | Yes | | |
| Dillon Dustybull | CSKT | Yes | | |
| Susette Billedeaux | CSKT | Yes | | |
| Eli Sheridan | CSKT | Yes | Yes | |
| Judy Gregorius | myself ranching | | Yes | |
| Mark Gregorius | " " | | | |
| Louis Hodgson | Myself- property | | Oppose | |
| Michal Delgado | Property owner | | oppose | |
| Austin Taylor | Property owner | | oppose | |
| Wendy Baynal | water user-irrigator | Yes | | |
| Laura O'Neel | Concerned Citizens of the Flathead | | Yes | |
| EARL MCHENRY | SELF FLATHEAD | | YES | |
| Dale Haaver | self | | Yes | |
| Brenda Miller | self | | YES | |
| NANCY O'BRIEN | self | | YES | |
| Teri Swenson | self | | X | |
| Kara Wolf | Self | | X | |
| Matt Regier | Self | | X | |
| Julie Wolf | Self | | X | |
| JEFF Wolf | SELF | | X | |

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|---|---|---|---|---|
| Vern Clairmont | Self | Yes | | |
| Lynell Phillips | Self | Yes | | |
| Jane Cuffey | Montana Stockgrowers | Yes | | |
| ~~Roberta~~ Decker | Self | Yes | | |
| Rae M. Lopez | Self | (Yes) | | |
| Dris Lopez | CCC | X | | |

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| Name | Representing | Support | Oppose | Info |
|---|---|---|---|---|
| JOHN MOONS | SELF. | | ✓ | |
| Roy Lake | Self | ✓ | | |
| HOWARD HIMS | Self | | ✓ | |
| Perry Francis | Self Acres Irrigator | | ✓ | |
| John Youngberg | MFBF | X | | |
| Kathryn Forslund | | | ✓ | |
| DAVE SNYDER | MISSION VALLEY | | X | |
| Gordon Wood | Self | ✓ | | |
| Brian Quigley | Self + RMSGA | | ✓ | |
| Kim Skinner | Self + RMSGA | | ✓ | |
| Greg Lemm | FJBC | | ✓ | |
| Scott Kerr | Self | | ✓ | |
| MICHAEL GALE | SELF | | ✓ | |
| ROBERT STARCKS | SELF | | ✓ | |
| Bryan Bowl | Ravenwood Ranch | | ✓ | |
| Forrest Jolley | Self | | ✓ | |
| David Tobol | Tobol Farms | | ✓ | |
| Johanna Clark | Clark Ranch | | ✓ | |
| NORM REMM | TWIN WILLOW RANCH | | ✓ | |
| Cooney Tyson | My Ranch | | ✓ | |
| Steve Tobol | Ronan Irrigators | | ✓ | |
| Craig Woolard | City of Bozeman | ✓ | | |

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| Name | Representing | Support | Oppose | Info |
|---|---|---|---|---|
| JAN HAAG | SELF | | X | |
| Jerry Gentry | Self | | X | |
| Jim Huff | self | | X | X |
| Shirley McHenry | Self | | ✓ | |
| Daniel G. Kimberley | Self | | ✓ | |
| Gord Kimberley | Self | | ✓ | |
| Julie Johns | Self | | ✓ | |
| Chris Grier | self | | X | |
| Jack Gross | Self | | X | |
| Dorene Vallee | Self | X | | |
| Daniel J Comerford | Self | | X | |
| Jerry O'Neil | self | | X | |
| Merwin Leep | CCT | X | | |
| Brenden Leep | Self | X | | |
| John O'Neil | " | | X | |
| Wade Sigurd | Self | | X | |
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**Carmine M. Mowbray**

P.O. Box 1202 • 38334 Pinewood Dr. • Polson, Montana 59860
406.883.4677 • Fax 406.883.4680 carminemowbray@gmail.com

**Additional Documents**
**SENATE: Judiciary**
**Date:** 2/16/15
**Bill No.** SB262

February 12, 2015

Greetings Honorable Senators
Sales
Fielder
Sands
Vincent
Driscoll
Hansen
Hinkle
Kary
Larsen
McNally
Moe
Swandal,

There is no need to repeat the facts. Soon you will make a decision that will either kill the Water Compact; or release it and unlock Western Montana from the shackles of uncertainty, discord and enormous legal costs.

Montanans who have read the document (as I have) realize it does not completely satisfy either party. Having followed each iteration of the terms, I'm sure you'd agree that further concessions would have antagonized the "conceding" side.

We elected you to represent the best interests of Montanans, and lead without fear.

Please see the wisdom of a YES vote so we can move toward the future again. Thank you very much.

Respectfully,
Carmine Mowbray
Former Montana Dist. 6 Senator
Polson, Montana

**Billie J Lee**
**BillieLee Project Consulting, dba**
*Providing Economic and Community Development Services to Local Governments and Nonprofit Organizations*

February 14, 2015

Senator Scott Sales, Chair
Members of the Committee

Subject: Proponent – SB262 Water Compact

I am writing this to the Committee as a proponent to SB262 and to ask that the Committee work to ratify this Compact, and that the Committee members speak on behalf of its subsequent ratification in other Committees and on the floors of the Senate and House

I have provided leadership to economic and community development activities in Lake County and within the Western Rural Development Region serving Lake, Mineral and Sanders Counties and the Flathead Indian Reservation for over 22 years. I have witnessed both the very positive economic impacts that result from the Tribe and the communities and citizens that live in our region working together; and the very negative impact that is resulting from the continuing battle between neighbors and communities and the Tribe as a result of these ongoing negotiations. Individuals and businesses alike have grown fearful of either investing or expanding in the region as a result of the on-going fear-mongering that has marked the opposition's attempts to derail and defeat the negotiations. Communities are at risk of losing their abilities to assure a future with adequate water supplies for their citizens. And hateful conversations and letters have become a fixture in our newspapers.

To their credit, the Tribe and the State have been willing to come again and again to the table; have listened and have hammered away at the issues that have been brought to them. I believe that the result is fair and just to: the Tribe; local communities; irrigators and both current and future residents of the area and, indeed, the whole of Montana.

Water is the most treasured resource we have; as a peoples, we tend to be more than wasteful with it, as if it will last forever. I ask that you take the responsible steps of ratifying this Compact. It is good for our Communities, for the long term economy of both our region and the state, and for the very earth we live on.

Sincerely,
Billie J Lee

405 16h Ave E, Polson, MT 59860
406.253.5064

**My husband & I are irrigators in the Mission Valley. We have been farming and ranching here for 22 years. We support the compact. The people who oppose the compact do not speak for the majority of the irrigators.**

**The monies we would receive from the State and Federal Governments for passing the compact would help to improve and upgrade our irrigation systems and put money back into the community and give the economy a boost.**

**In our personal situation, we are at the end of the ditch and it is hard to get stock water to our livestock in May so we can turn our cattle out on pasture. A lot of water is lost thru evaporation and soaking the ditch to get it the distance to us. One of the improvements that have been discussed is putting in wells in places like ours that would save significant amounts of water.**

**If the compact does not pass, we will be in litigation for decades. This would not only affect us financially but also our physical and mental health would suffer from the stress of litigation and not knowing what will happen with the water.**

**Passing the compact is good for the entire State of Montana, not just the Flathead Reservation. The Federal Government, the State and the Tribe have worked hard to make a fair compact, and it is fair for everyone.**

**Please vote YES to pass the compact.**

**Glen & Karen Raisland**

34365 Gunlock Road
Charlo, MT 59824
Feb 12, 2015

Dear Senator

We are writing to you out of concern for the Water Compact for the Flathead Indian Reservation. We have lived on the Flathead Indian Reservation since 1994. Currently we own approximately 100 acres with irrigation water for 70 acres, part in the Mission District and part in the Flathead District.

Curtis is a retired Civil Engineer with 41 years experience, receiving his Professional Engineer license in Montana in 1966. He is a supervisor with the Lake County Conservation District.

Janette has been a Realtor in the Mission Valley since 1994. We currently own and she operates Windermere Real Estate, Ronan/Inc. She is the current president of the Boys and Girls Club of the Flathead Reservation and Lake County.

We have both attended numerous meetings concerning the compact, read many articles both pro and con, and know and have listened to people both for and against the compact.

We believe that after all the years preparing the compact, it is time to bring it to completion. It is a very acceptable compromise considering all the issues. The Flathead Indian Irrigation Project collects the water and distributes that water, as available, to irrigated ground within the project. That agreement to safeguard our irrigation is sufficient for us. Instream flows are a given. Wells are protected.

Currently our Flathead Board of Control has taken our administrative funds to wage war against the compact, when a great many, and very likely the majority of irrigators are for the compact.

Without the compact, property values on the reservation will fall dramatically. Lenders will be afraid to make real estate loans due to the uncertainty of water rights.

We urgently request your support of the compact,

Curtis W Rosman

Curtis W Rosman

Janette M Rosman

Janette M Rosman

## Jan Tusick

**From:** janette <janette@ronan.net>
**Sent:** Saturday, February 7, 2015 10:46 AM
**To:** foodandagcenter@gmail.com
**Subject:** water compact, irrigator and realtor

As an irrigator I support the Salish And Kootenai water compact. As a Realtor for 21 years I also see the need for the legislature to pass the water compact. When I started selling real estate in 1994 the State of Montana, , Salish & Kootenai Tribe and the US Government were in the process of negotiating this compact. In recent years there has been serious negoitiating, is It perfect no, it s terrible, no. Will there ever be a time that everyone is satisfied, No. You have had more than enough time to study the compact, the public has had more than enough time to study the compact, the US Government, Salish and Kootenai Tribes and the State of Montana have had more than enough time to study and put this compact together and it is time to Vote YES and put the Compact in Motion.

As a Realtor I have concerns about not passing the compact how it will effect the property values in Lake County. The 20 realestate contracts I closed last year only two were out of state buyers. The past five years nearly 95% of my business is local, I have not seen very many out of state buyers, they have called and questioned me about the compact. I feel by not passing the compact in the 2013 legislature it has already affected economic conditions in the Mission Valley. We live on the Reservation, I personally feel the Tribe has been more than fair in their negotiating and it is a fair compact.

Recently I checked the irrigation fees on our property in the Saint Ignatius Project. Tax ID 12769. The Flathead Irrigation O & M has remained the same for several years. The Flathead Irrigation Administration fees have doubled. We have 51 acres in this parcel and 24.27 acres are irrigated. The Adm. Fees are $121.35 for 24 acres per year. On tax ID 21274 we have 48.45 Acres and 45.50 Acres are irrigated and the Adm. Fees are $227.50. Those fees for that parcel have doubled as well. I'm a bit unhappy with the Flathead Joint Board Control for hiring lawyers and lobbyist and the increasing the Flathead Irrigation Administration fees to pay for what they think is right. They appear to be the force for holding up the passing of this compact, I am disappointed because I don't feel they represent the irrigators in a fair and just way and their efforts are having a negative impact here in the valley and in the halls of the capitol in Helena. Take the Vote, Vote YES, pass the Compact, move forward so there can be some healing in the valley between irrigators, neighbors, farmers and realtors.

Janette Rosman
Broker/Owner
Windermere Real Estate/Ronan, Inc.
63506 Hwy 93
PO BOX 489
Ronan, Mt. 59864
406-676-3443 Office

406-261-6792

Merrill Bradshaw
30968 Jocko Road
Arlee Montana, 59821
February 13, 2015

Senate Judiciary Committee
Montana State Legislature
64th Session
Helena, Montana

Members of the Senate Judiciary Committee,

I live in the Jocko Valley, near Arlee, and own irrigated land. We have grown oats, hay crops, livestock, fruits, vegetables, and native grass and flower seeds.

Please support SB 262; the Confederated Salish and Kootenai Tribes revised Water Compact. A reliable supply of irrigation water is good for the Jocko Valley and all Flathead Indian Irrigation Project users. A reliable supply of water for streams on the Flathead Indian Reservation is good for all its residence. This agreement is a visionary document that will accompany a future strategy to manage drought years, and secure a sustainable use of water for irrigation, wildlife, and human consumption.

Thank you,
Merrill Bradshaw
Arlee, Montana

## Jan Tusick

**From:** cindy@cindywillis.com
**Sent:** Wednesday, February 11, 2015 8:11 PM
**To:** foodandagcenter@gmail.com
**Subject:** water compact

My name is Cindy Willis. I have been a Realtor in Lake County since 1990, representing buyers solely since 1998. Buyers want a great deal of certainty before buying property. I give every buyer what I call my "water lecture" in which I give a quick overview of water rights issues west of the Mississippi and specifically my understanding of the situation on the Flathead Reservation. Montana law requires me to disclose any "material fact" that could have an impact on a buyers decision to purchase.

I have had potential buyers stop me "right there" with no need to go any further since they could buy property elsewhere without the uncertainty of such an essential part of our lives.

I urge the passage of the Water Rights Compact.

Lucinda K. (Cindy) Willis
42318 Park Circle Drive
Polson MT 59860

Broker Owner of Real Estate Buyers Solutions Montana Brokers License #6684

February 12, 2015

To: Senate Judiciary Committee

Re: SB 262 CSKT Water Compact – 2015

Knowing you will be inundated with data, ideas, opinions, and predictions at your hearing on the CSKT Water Rights Compact on Feb 16, I will keep my input brief:

This process of adjudicating water rights in Montana was initiated by the Montana Legislature to protect our water uses from downstream claims (in other states) and is not creating any new rights.

Due to cost and time considerations the water adjudication courts could not and can not complete the above goal. The Compact process was originated to facilitate the process.

No new water rights are being created or transferred.

Keeping our word is the way we do things both in America and "out west" and a treaty is our word as is a negotiated agreement.

During 2009 Session (61st Legislature) I testified to committee and spoke on the floor in favor of extending the time allowed for reaching a Compact agreement. We were pleading for more time because at the time the negotiators were talking not fighting. More than once we heard "Whiskeys for drinking, water is for fighting". Time was extended and an agreement was reached only to be rejected by the 62nd Legislature.

Now the Compact is back with changes in management, but also a new set of opponents with new complaints based on mythical "water rights" and likely will never be satisfied. The motivation for this group is in question and based on past results judicial action will most likely not favor the State of Montana, the Federal side, the FIIP, individual water users (including domestic), nor will it favor the town water systems.

Please support SB 262 and save the people of the Flathead Reservation and Lake County from expensive and questionable outcomes in judicial proceedings.

John Fleming

– Landowner and Irrigator in Lake Co and Flathead Reservation

-Representative Lake County 61st Legislature

-Lifelong resident

Lake County Commissioners 406-883-7204 Fax (406) 883-7283

LAKE COUNTY

106 4th Ave. E. Polson, Mt. 59860

February 11, 2015

Senate Judiciary Committee
State Capitol
Helena, MT 59620

To the Committee:

In January of 2014 the Lake County Commissioners sent a letter to the legislative Water Compact Interim Committee stating our support for passage of the Confederate Salish and Kootenai Tribes and State of Montana Water Compact. This letter serves to re-affirm our support of the Compact. We believe acceptance of the Compact is in the best interests of all Lake County citizens for the following reasons:

- We believe that the process followed to create the compact was fair, reasonable, and equitable to all citizens of Lake County.
- We believe that acceptance of the proposed compact will prove to be an economic benefit to Lake County. The compact resolves all Tribal claims to water which promotes stability in private property values, and passage will also encourage new businesses to locate in our county.
- We believe that acceptance of the compact will prevent lengthy and costly litigation for all parties on both sides of the issue.
- We believe that the debate in our county has been centered on project irrigation issues, and as important as these issues are, they are only part of the compact debate. Equal importance should be placed on the guarantees afforded by the Compact to the approximate 3000 private wells at stake, the municipal water supplies, i.e. Polson, Ronan, & St. Ignatius, and for irrigation waters outside the project.

Debate for and against the Compact has been long and contentious, not only in our county, but also in surrounding counties. We believe that all parties have had ample opportunity to participate in the debate and it is now time to move forward and accept the Compact.

Thank you for your consideration of our comments.

Sincerely,

Gale Decker

Gale Decker, Chairman
Board of Lake County Commissioners

**Giles Conway-Gordon** 4:22 PM (2 minutes ago)

to me

Jan,
This is to confiim that I have sent the message below to each of the members of the Senate committee for the hearing on Monday.
---
Dear Senator .....,

I and my wife are irrigators (85 irrigated acres, 4 miles West of I93 on Duck Road, 2 miles South of Ronan).

I am contacting you for two reasons:

First, to confirm our strong support for the water Compact with the Tribes as negotiated. We believe strongly that the Compact is very much the best solution to the question of rights to irrigation and very strongly urge you to support it in committee and the Montana legislature.

Secondly, you should be aware that the **opposition of the Flathead Joint Board of Control to the Compact does NOT represent the opinion of the irrigators**. The Board have taken no steps to ascertain by proper ballot the actual balance of irrigators for or against the Compact and have no good evidence to support their opposition to it. They are acting without the proper authority.

Yours sincerely

Giles Conway-Gordon

Bernadette Bigley

---

Best regards

**Karen Ryan** **karenryan@montana.com via lakecountycdc.org** 2:22 PM (2 hours ago)

to jan.tusick

Dear Legislators,
We are irrigators in Ronan and we are in favor of the Water Compact. There has been an incredible amount of misinformation regarding the compact. We feel it is a fair and reasonable compact and without it our future as farmers and property owners will be greatly devalued.

We urge you to do the right thing and vote Yes for this compact.

Sincerely,

Dan and Karen Ryan
44864 Kaiser Rd
Ronan MT 59864

Additional Documents
SENATE: Judiciary
Date: 2/16/15
Bill No. SB262

**TO:** **Senate Judiciary Committee Members**
**FROM:** **Irrigators in the Gallatin Valley**
**DATE:** **Monday, February 16th, 2015**
**SUBJECT:** **Compact Benefits Gallatin Irrigators, Future Water Users**

Chairman Sales & Members of the Committee,

We take many things in our society for granted—but we can't afford our water to be one of them.

Irrigators in the Gallatin Valley, and across the state, don't just depend on access to water, they depend on the certainty of being able to use it now and in the future. Our family farms and ranches, municipalities, and industrial users rely on our water rights for our livelihood. Montana's water users need to know whether they will be able to utilize water at historic levels, even in times of water shortage and whether that access/use can be transferred from one generation to the next. The Confederated Salish & Kootenai Tribes Reserved Water Compact provides this certainty and protects the water users of today and tomorrow.

The Compact protects all existing water rights. It doesn't create new water rights or alter existing ones in the Gallatin, but ensures that the existing rights and historical uses of Montana's water users are upheld and protected. Through the Compact the tribes have agreed to co-own a few specific in-stream flow rights with Montana Fish, Wildlife & Parks instead of seeking sole ownership. None of the co-owned instream rights are in the Gallatin. Additionally, with the Compact the tribes have agreed that they will not litigate instream flows that exist off of the reservation—meaning Gallatin irrigators won't have to go back to the Water Court, again.

By releasing more water from Hungry Horse Reservoir to be used on tribal lands and in other water short basins, Montana water users will benefit from the availability of additional water resources that the Compact provides. Without the Compact the use of this water remains at the discretion of the Federal Government.

However, should the Compact fail, irrigators will be subject to more uncertainty than perhaps any other stakeholder group impacted by the CSKT Water Compact. If the Compact does not pass, much of the adjudication that has already been settled by the Montana Water Court will have to be revisited and a minimum of 35 basin decrees will have to be reopened – including the Gallatin. This will unquestionably hurt irrigators, individually forcing us back into the adjudication process – even though we thought we were done. Not only will much of the work done by the Montana Water Court have to be reexamined, but with the filing of an overwhelming number of new claims it will take decades to complete the adjudication process.

The Compact has many benefits that are the product of extensive negotiations and cooperative efforts between all parties involved. With input from irrigators, farmers, ranchers, and water users from every corner of the state, the CSKT Water Compact is the

best option for all Montanans. With such positive impacts on the line and the future of our water hanging in the balance, we have an obligation to pass the CSKT Water Compact—not just for the protections that it will offer to water users across the state today, but for the opportunities it preserves for the farmers, ranchers, and irrigators of tomorrow.

The above letter has been signed by the following irrigators in the Gallatin Valley:

Al Lien
Alan English
Alan Venema
Becky Weed
Bill Kimm
Bill Tatarka
Brian Dunning
Chris Stucky
Clark V. Johnson
Curtis Dykstra
Cynthia K Johnson
Dale Flikkema
Dan McReynolds
Dan Triemstra
Darren Braaksma
David Pruitt
Don Vaniman
Doug Alberda
Doug Braaksma
Doug Dyk
Duane Burkenpas
Eileen Flikkema
Elizabeth Triemstra
Eugene Cole
Gabriel Ditch
Gallatin Conservation District
Gary Paulson
George Alberda
Glen Droge
Greg Braaksma
Greg Leep
Ilene Casey
James House
Jason Kimm
Jennifer Mohler
Joe Axtell
John Hunziker
John Mahoney

John Schutter
John Venhuizen
Jon Alberda
Knife River
Larry Klompien
LaVonne Stucky
Les McCartney
Louise Smith
Mark Huyser
Mark Kimm
Maynard Flikkema
Mick Seeburg
Mike Gaffke
Pamela Hainsworth
Rick Braaksma
Rod Triemstra
Sherwin Leep
Sid Kamps
Sid Schutter
Spain Ferris Ditch Company
Spencer Smith
Spring Creek Farms
Steve VanDyken
Susan Duncan
Walt Sales
White Ditch Company
Carl Vandermolen
Craig Bos
Kathryn Kelly
Martin Kimm
Nick Schutter
Paula Posey

Additional Documents
SENATE: Judiciary
Date: 2/16/15
Bill No. SB262


**MONTANA AMERICAN INDIAN CAUCUS**

**64TH LEGISLATIVE SESSION**

**ADDRESS:**
PO BOX 200400
HELENA, MT 59620
PHONE: 406.444.1634
FAX: 406.444.4362

**SENATE MEMBERS:**
SHARON STEWART-PEREGOY
LEA WHITFORD
JONATHAN WINDY BOY

**HOUSE MEMBERS:**
GEORGE KIPP III
G. BRUCE MEYERS
CAROLYN PEASE-LOPEZ
RAE PEPPERS
BRIDGET SMITH
SUSAN WEBBER

**CAUCUS STAFF:**
ABBEY COOK


To: Senate Judiciary Committee
Honorable Chairman Sales

February 16, 2015

Honorable Chairman Senator Sales and Members of the Senate Judiciary Committee

We, the Montana American Indian Caucus would like to express our full support of the adoption of the Confederated Salish Kootenai Tribes Water Compact.

We are in full support of the language and appropriations outlined in the bill and we ask that you recommend a 'do pass'.

The Water Rights outlined in the bill are based upon a joint agreement between the tribes and other invested parties.

We fully concur that this compact will ensure the shared water rights of the tribes and other invested parties.

Respectfully submitted,

The Montana American Indian Caucus

Additional Documents
SENATE: Judiciary
Date: 2/16/15
Bill No. SB262

# Testimony Supporting SB 262 and the CSKT Water Compact
## Senate Judiciary Committee

February 16, 2015
8:00 AM
Room 303

Mr. Chairman, members of the Committee, my name is Jim Hagenbarth and our family has been using water and livestock to enhance the land we manage in southwestern Montana and southeastern Idaho for 140 years. In the last 35 years I have filed 178 water right claims and guided them through the adjudication process and am still not completed in Montana. In this process we used collaboration, mitigation, stipulations, and litigation to secure the most practical, beneficial and defensible water right possible. Of all these tools, litigation has been the least productive. My ego and my greed have cost our family dearly in trying to gain the ultimate outcome through litigation.

Over the years I have been intensely involved in the collaborative process dealing with water, watersheds, bison, brucellosis and Sage-Grouse. These efforts have lasted from a few months to several decades. They included all interests to find workable, practical and feasible solutions to very difficult issues.

The Water Compact being discussed today is a similar negotiated agreement that took over a decade of collaboration effort. It is being presented to the legislature as a template to guide the management of water rights between the state, its people, the federal government and the Confederated Salish/Kootenai Tribe. It is disappointing that commission member opposition to the Compact is occurring and that individual legislators have little regard or understanding of the holistic nature of this negotiated agreement. Opposition to this Compact is certainly expected and is a healthy exercise in understanding the issues, but failure to pass this Compact intact will have huge negative consequences for users within the compact basins and along the major rivers in Montana claimed as aboriginal territories of the tribe.

Failure of this water compact could jeopardize all the complicated negotiations that make available other sources of stored and pumped water to meet the needs of all users in the basin. It may limit the availability of the massive state and federal funding needed to address the failing infrastructure of the delivery system. It will certainly expose individual water right holders within the Compact Basins and throughout Montana to water right litigation with the Federal Government and the Tribes with a priority date that trumps everyone. Instream flows

have become a major issue in Montana and with an 1855 priority the Tribes and the Federal Government will have a lot of partners who will participate based on being an interested party and not solely a water right owner. Instream flows claimed by the Tribe will be based on generous flows determined by the Fish and Game and supported by every inflow stream advocate in the state and nation. This could result in the exposure of thousands of water rights to expensive and time consuming litigation and re-adjudication. Whether we like it or not, the Tribe has a royal flush. This collaborative state compact includes all water users in amenities greater than each would get on their own.

I ask that we all rein in our egos and our greed and exercise common sense and pass this compact.
Thank you.

The sovereign status of Indian tribes was recognized by the British crown and later the United States through the treatment of tribes as foreign nations. This concept is most notably recognized through the various treaties between the United States and Indian tribes, and is confirmed by well-settled federal law that acknowledges the distinct nature of tribes and their inherent self-governing authority. Indeed, the notion of tribal sovereignty was confirmed by the United States Supreme Court in its very first term in 1832. *See Johnson v. McIntosh*, 21 U.S. (8 Wheat.) 543 (1823).

Tribal sovereignty refers to a tribe's powers of self-government, which can under certain circumstances extend to non-Indians and even outside of a tribe's reservation boundaries. But tribal sovereignty also refers to the *source* of a tribe's powers. Federal courts have repeatedly confirmed that tribal powers are inherent, stemming from time immemorial. Unlike a county government, for example, which receives delegated powers from a state legislature, tribal power needs no such delegation.

Tribal sovereignty is limited in certain respects—all sovereigns have limitations—as articulated through federal court jurisprudence. Below we have briefly described the primary limitations on tribal sovereignty. Generally, other aspects of inherent tribal self-government authority remain intact.

1. Tribes may not grant (or sell) lands except to the United States. *See Johnson*. This limitation originated during the treaty-making era and prohibited private individuals and states from acquiring Indian lands directly. Today, lands held in trust by the United States for the benefit of tribes, continue to require federal approval (usually by the BIA) in order to be sold. Lands purchased by tribes can be freely sold by tribes without federal involvement.

2. Tribes may not treat with foreign nations. *See Cherokee v. Georgia,* 30 U.S. (5 Pet.) 1 (1831), *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832).

3. The inherent criminal authority of tribes is limited to punishment of Indian offenders, except in cases of domestic violence. *See Oliphant v. Suquamish,* 435 U.S. 191 (1978), *U.S. v. Lara*, 541 U.S. 193 (2004) Indian Civil Rights Act, as amended, Tribal Law and Order Act, and Violence Against Women Act, as amended.

4. Tribe's generally lack civil authority over the activities of nonmembers. This general rule has two exceptions. First, tribes may retain authority to regulate through taxation or others means the activities of nonmembers who enter into leases or consensual relationships with tribes. Second, tribes may regulate non-Indians whose activities have an effect on the political integrity, economic security, or the health and welfare of the tribe. *See Montana v. United States*, 450 U.S. 544 (1981).

There are numerous specific scenarios relating to the extent of tribal sovereignty, far too numerous to mention here. Accordingly, any specific question as to the power of an Indian tribe with regard to a certain person, entity, issue or activity would require in-depth analysis.

Additional Documents
SENATE: Judiciary
Date: 2/16/15
Bill No. SB262

Senate Judiciary Committee:

I have been an irrigator on the Flathead Indian Reservation at St. Ignatius, MT for 55 years. My wife and I live on the same place my folks moved to in 1960. We support the Water Compact (SB 262) and it's passage, believing it is best for all of Montana, for the following reasons:

- We will have the right to use water as before but with the same priority date as the tribe.
- We will retain the low cost block of power associated with Kerr Dam.
- There will be additional water for pumping from Flathead lake.
- Our wells, private and municipal, will be protected as well as the right to drill future wells.
- The Tribes off reservation claims will be settled.
- There will be federal and state funding for improving the Flathead Indian Irrigation Project.

Without the compact we will see:

- Years perhaps decades of litigation.
- Less water for the Flathead irrigators due to increased in-stream flows.
- USFWS looking into bull trout water requirements.
- The Tribe filing off reservation water claims on the west half of Montana because of their status as a Stevens Treaty Tribe.
- Land values falling due to the uncertainty of the outcome creating economic hardship not only for agriculture but for all of Montana.

In the 1980's and 1990's the irrigation districts, under the Flathead Joint Board of Control, took the Tribe and the BIA to court some 30 times over in-stream flows, project operations, water rights, control of the power division of the irrigation project, the Tribes right for environmental regulation and other issues. In every case involving water, environmental regulation or administrative decisions by the U.S., Flathead irrigators lost. We believe they will lose again. We ask what has changed? The majority of the board members of the current Flathead Joint Board of Control are choosing to relive those years by using our administration fees to pay attorneys, lobbyists and advisors to defeat the Water Compact (SB 262). We ask that you please stop the insanity by voting for it's passage.

Respectfully
Wayne & Maccine Scammon

The following irrigators have ask to have their names be added in support:

John and Lydia Fleming
Hank and Dorothy Jorgenson
Ester Bick
Les Billington
Norton and Sharon Couron
Rodd Richardson

Additional Documents
SENATE: Judiciary
Date: 2/16/15
Bill No. SB262

February 12, 2015

Dear Judiciary Committee:

We the following owners of businesses and property in Lake County Montana are in support of a compact to settle the Reserved Water Rights here on the Flathead Indian Reservation. We feel it would be a very costly mistake for our local economy if this were to be settled in the court system. This issue is not just an irrigation issue. The uncertainty that years of litigation will bring will affect our real estate market, our building industry, banking industry and the ability for cities in our area to expand their water systems.

We would appreciate a positive vote for moving this bill to the senate and then to the house.

Sincerely,

| | |
|---|---|
| Dennis Duty | Polson, MT |
| Mac Swan | Polson, MT |
| Matt O'Neill | Polson, MT |
| Larry Ashcraft | Polson, MT |
| Gordon Zimmerman | Polson, MT |
| Wayne Schile | Polson, MT |
| Karen Duty | Polson, MT |
| Dorothy Ashcraft | Polson, MT |
| Gloria Califato | Polson, MT |
| Tim McGinnis | Polson, MT |
| Mike Maddy | Polson, MT |
| Tim Hinderman | Whitefish, MT |
| Ric Smith | Polson, MT |
| Herb Kimball | Polson, MT |
| Keith Urbach | Polson, MT |
| Bea Cottington | Polson, MT |
| Bill Boettcher | Polson, MT |
| Sarah Smith | Polson, MT |
| John Stene | Polson, MT |

| | |
|---|---|
| Sue Urbach | Polson, MT |
| Bonnie Kimball | Polson, MT |
| Dave Cottington | Polson, MT |
| Karla Gallatin | Polson, MT |
| Tim Pfahler | Frenchtown, MT |
| Carlisa London | Polson, MT |
| David Salomon | Polson, MT |
| Toni Young | Polson, MT |
| Cort Potter | St Ignatius, MT |
| Tami Sanderson | Polson, MT |
| Martin Olsson | Ronan, MT |
| Dave Ottun | Polson, MT |
| Tom Tibbles | Polson, MT |
| Rob Sloan | Polson, MT |
| Jeff Gallatin | Polson, MT |
| Paul London | Polson, MT |
| Rob Turner | Polson, MT |
| Carol Tibbles | Polson, MT |
| Hans Lund | Polson, MT |
| Kathy Crockett | Polson, MT |

Additional Documents
SENATE: Judiciary
Date: 2/16/15
Bill No. SB262


# LORENTS GROSFIELD

285 Grosfield Lane
Big Timber, MT 59011-7724
Phone/Fax: 406-537-4489
Email: lorents@mcn.net


February 16, 2015

Senate Judiciary Committee

Re: CSKT Compact (SB 262)

Chairman Sales and Members of the Committee,

My name is Lorents Grosfield and I am a third generation cattle rancher and irrigator from Big Timber, in southcentral Montana, who has been very interested in water issues and water policy for over 35 years.

I strongly support the CSKT Compact because I believe it is fair to both tribal and nontribal members who live on the Flathead Reservation, and because I am very fearful of the consequences of not passing it. Besides agreeing with the many points made here today by all the other proponents, I want to focus on just one point.

April 30th, 1982 was an important day for Montana water users. That was the date by which all irrigators, municipalities, businesses, etc. who believed they had valid water rights had to file their claims in our adjudication process. Not to file was considered abandonment of those water rights, with no remedy. The only entities left out of that requirement were those federal and tribal entities that had reserved water rights under federal law, and who were participating in the Reserved Water Rights Compacting process. The CSKT is the last such entity, and this is the Compact before you. If this Legislature does not pass the Compact, the Tribes are required under Montana water law to file all their claims by June 30, 2015. The impact of this deadline is exactly the same as the April 30th, 1982 deadline was for the rest of us. In other words, if the Compact does not pass and the Tribes neglect to file by this deadline, all their water rights will be deemed abandoned.

Obviously, the Tribes would be stupid not to file their claims, just as I and all irrigators in this room would have been stupid not to file their claims by April 30th, 1982.

I want to ask you to think a little about how things will unfold if this Compact does not pass. The Tribes will obviously file all their claims by the deadline at the end of June, just 4½ months from now. It is certain that these claims will be larger and more extensive, both on and off the reservation, than the rights granted in the Compact.

Each tribal claim will be accompanied by evidence to support the claim. For off-reservation claims, all of which will be instream flow claims with a "time immemorial" priority date, this supporting evidence for each claim will include at least the following two elements:

1. expert witness testimony, affidavits or depositions that the claim involves "usual and accustomed places" that the Tribes used historically, and
2. expert biological testimony that the amount claimed is necessary to support a viable fishery in the reach claimed.

This puts any objectors in the position of having to find their own expert witnesses to refute the expert witness testimony that is part of the claim. The Tribes' expert evidence from reputable anthropologists and historians will be based largely on research of items like the Lewis and Clark Journals, trapper's and

Additional Documents
SENATE: Judiciary
Date: 2/16/15
Bill No. SB262

Good Morning. Thank you for allowing me to provide input in the discussion about the proposed Water Compact between the Confederated Salish & Kootenai Tribes and the State of Montana. There are many areas of concern and issues to be decided, but I would like to highlight one area that does not seem to get much "press." That area is the potential cost each homeowner and/or business would have to bear to defend their state-based water right.

My interest is both as an individual homeowner and a representative of the Flathead Lake United Methodist Camp. The Camp serves youth and adults from across Montana and has limited financial resources.

Of the more than 219, 000 state-based water rights, roughly 1/4 to 1/3 are likely to be in the area affected by the CSKT-Montana Compact. That means around 70,000 individuals are likely to incur personal expenses to defend their water rights. The process to accomplish a successful defense is at best 8 to 10 hours. That means an individual could have to pay an attorney between $2,000 and $3,000 dollars out of their own pocket to defend their water rights. Many Montanans cannot afford such an expense and thus, could lose their water rights if they fail to respond to a legal or administrative requirement. Some individuals might choose to defend their rights in person rather than hiring an attorney. If so, they would have to take time off from work resulting in lost wages. Either way, this process will be costly and could clog the water adjudication process for many, many years.

Cities and towns too will have to defend their water rights at costs much greater than those cited above. This is likely to take funds away from other programs and services.

The Compact must be approved during this session. Without it, the Tribes will file their claim for their reserved water rights by June 30, 2015. That will start the expensive process of water rights defense mentioned previously.

The Compact presented to you is not perfect. You may feel frustrated because you want to make changes to the Compact. As you know, you cannot because it is a negotiated agreement, a "take it or leave it" document. But please remember, both parties, the State of Montana and the Confederated Salish & Kootenai Tribes, had expert representatives working together for years to come up with this agreement. The result is a document in which both parties compromised.

As you decide whether to approve or deny this Compact, please remember that you will be affecting the lives and livelihoods of many, many Montanans. I urge you to support and approve the Water Compact. Again, thank you for your service to our state.

Respectfully submitted,

Chris Hagar
P.O. Box 244
Bigfork, MT 59911

Additional Documents
SENATE: Judiciary
Date: 2/16/15
Bill No. SB262

My Name is Kerry Doney. I have been ranching all my life in the Jocko Valley ~~on the~~ Flathead Indian Reservation. I work close to 1000 acres of land and am in the middle of calving so I can't get over to Helena to testify. I am on the Flathead Joint Board of Control and strongly disagree with the present course the majority of the board is taking. They failed to participate in the negotiation sessions that occurred over the summer. They are under the influence of the Concerned Citizens of Western Montana, an anti federal government, fear -mongering group of mostly people who do not make a living farming. They choose to have no understanding of Montana law or federal reserve water rights and are quite loose with their facts. I believe that my economic security as a farmer is guaranteed if the Compact passes. I am fearful of the economic, social and political impacts if the Compact fails. I wish I could be in Helena to say this myself

Kerry Doney

Kerry Doney

I, Roger Christopher a former commissioner of the Flathead Joint Board of Control, also think the board has taken a wrong turn in opposing the Compact. Passing the Compact allows me economic certainty for running my farm.

Roger Christopher

Roger Christopher

My name is Sonny Dumontier. I am a former commissioner of ~~the Flathead Joint Board of Control~~ the CME and I feel that the FJBC has been hijacked by group of people who not only don't understand the issues, but are throwing us farmers and ranchers who make a living working the land under the bus with their opposition to the Compact

Leroy Sonny Dumontier

Sonny Dumontier

Additional Documents
SENATE: Judiciary
Date: 2/16/13
Bill No. SB 262

Ron Hepp (Irrigated Farmer)
235 Sun River Road
Great Falls, MT 59404

The Hellgate Treaty of 1855 does not allow off reservation water rights.

The legislature creating off reservation rights will set the precedence for other tribes to demand off reservation rights.

The threat to file 10,000 water right claims is a desperate threat, as the Montana Water Court has handled over 200,000 claims, which is where *these claims belong*.

Article IV of the compact allows off reservation and out of state leasing of the water for the tribes monetary benefit. The State of Montana should be leasing the water for every Montanan's benefit.

This compact is much worse than when former Governor Racicot pushed for and the legislature voted for utility deregulation that resulted in the breakup of the Montana Power Company. History will not be kind to those who vote to forever give our water away.

Please vote against the compact.

Ron Hepp HD19 (406-799-0648) represented by Rep. Randall Pinocci (406-899-1947) who opposes the compact.

Additional Documents
SENATE: Judiciary
Date: 2/16/15
Bill No. SB262

# The "10,000 Claims" Hoax: Fear Mongering in Montana!

## *Extorting Montana's Approval of the Water Compact?*

- **The Threat**:
  - "If the Compact is not passed, the CSKT will file 10,000 claims across the State of Montana." *--Governor Steve Bullock, vetoing 2013 legislation that would have legislatively authorized continued negotiations with the CSKT*
  - "If the CSKT Compact is not passed, the 10,000 claims will complication, re-open and delay the Montana General Stream Adjudication by 20-30 years". *—Corey Swanson, Attorney General Fox Special Counsel, Water Compact, February 7, 2015*
  - "If the 10,000 claims are filed by the CSKT, everyone is going to have to hire their own lawyer to protect their water rights". *—Chris Tweeten, Chairman of the Compact Commission, January 10, 2015*

- **The Truth**:
  - "The 10,000 Claims have no basis in fact."*—Judge Russ McElyae, Chief Judge of the Montana Water Court, to Representative Kathleen Williams, September 4, 2014*
  - Aboriginal Territory is Not Subsistence Territory. The Treaty of Hellgate granted the CSKT *no rights* in Eastern Montana.*—Indian Claims Commission Proceedings*
  - Flathead Tribe Specifically Excluded from Judith River and other Treaties East of the Continental Divide
  - Federal Reserved Water Rights Do Not Exist Off the Reservation*—Winters Doctrine, 1908; McCarran Amendment 1953; Montana Constitution*

## SUMMARY OF FEDERAL RESERVED INSTREAM FLOW CLAIMS IDAHO SNAKE RIVER BASIN ADJUDICATION

| AGENCY / TRIBE | TYPE OF CLAIM | NO. OF ORIGINAL CLAIMS FILED | ALLOWED | DISALLOWED OR DISMISSED | STATUS |
|---|---|---|---|---|---|
| FOREST SERVICE | ORGANIC ACT<br>MUSYA<br>WILDERNESS<br>WILD & SCENIC<br>SAWTOOTH NRA<br>HELLS CANYON NRA | 1,359<br>2,389<br>7<br>8<br>5<br>1 | 0<br>0<br>0<br>6<br>0<br>1 | 1,359<br>2,389<br>7<br>2<br>5<br>0 | Final Settlement<br>Final Decision<br>Final Decision<br>Final Decree<br>Final Decision<br>Final Settlement (comprehensive claim was reduces to claims on specific streams and lakes |
| FISH AND WILDLIFE SERVICE | DEER FLAT REFUGE | 4 | 0 | 4 | Final Decision |
| NEZ PERCE / BIA | TRIBAL INSTREAM FLOW | 1,133 | 0 | 1,133 | SRBA Decrees Entered |
| NORTHWESTERN BAND OF SHOSHONI | TRIBAL INSTREAM FLOW | 27 | 0 | 27 | Final Decision |
| SHOSHONE BANNOCK TRIBES | TRIBAL INSTREAM FLOW | 1,030 | 0 | 1,030 | Dismissed with prejudice |
| SHOSHONE PAIUTE TRIBES | TRIBAL INSTREAM FLOW | 7 | 0 | 7 | Final Settlement |
| TOTAL INSTREAM FLOW CLAIMS | | 5,970 | 7 | 5,963 | |

# THERE IS AN ALTERNATIVE TO THE CSKT COMPACT: HB0247

No legislator should vote for a bill when scare tactics are used to ensure its passage. The threat of litigation has been used by the Compact Commission and the CSKT to push Montanan's into accepting a 1,500 page water compact that is impossible to read and understand. The water compact is a forever document that is far too big, too complicated and too fraught with potential legal issues to ratify without comprehensive and independent studies and analysis.

Representative Bob Brown has come up with a viable solution to the dilemma legislators are faced with. In the event that the CSKT Water Compact is not ratified, HB0427 provides that $13million in funding will be set aside to defend the water rights of Montanans throughout the state against the threatened aggressive claims of the Confederated Salish and Kootenai Tribes. The bill title says in part:

> **"AN ACT PROVIDING FOR THE DEFENSE OF WATER RIGHTS THROUGHOUT THE STATE OF MONTANA FROM COMPETING CLAIMS TO BE FILED IF THE LEGISLATURE DOES NOT PASS THE CONFEDERATED SALISH AND KOOTENAI TRIBES WATER RIGHTS COMPACT; PROVIDING AN APPROPRIATION FOR PROCESSING WATER RIGHTS CLAIMS FILED ON OR OFF THE FLATHEAD INDIAN RESERVATION"....**

This bill allows the state of Montana to stand against the scare tactics used by the compact commission and the tribe, to protect the water rights, state sovereignty, and the constitutional protections of its citizens from the overreach that is contemplated in the CSKT Compact. ***PLEASE VOTE "NO" ON THE CSKT COMPACT AND INSTEAD CHOOSE TO PROTECT MONTANAN'S RIGHTS BY VOTING FOR REPRESENTATIVE BROWN'S BILL HB0247.***

**Additional Documents**
**SENATE: Judiciary**
**Date:** 2/16/15
**Bill No.** SB262

Sunday, February 15, 2015

Mr. Chairman and Members of the Senate Judiciary Committee:

Please vote in OPPOSITION to SB 262, which goes way beyond simply assuring water for the Reservation. All citizens must have their fair share of water as called for in the Constitution. Only a "NO" VOTE protects water for ALL living in 11 counties west of the Continental Divide (farms, ranches, towns, cities).

IF PASSED, control goes from a State Managed Water Rights System to a small Reservation decision-making group. This bill is an insult and threat to the citizens of Montana undermining political integrity and threatening our personal and social economic well-being, security, and way of life, now and in the indefinite future.

I IMPLORE YOU, OUR HONORED LEGISLATOR ON THE SENATE JUDICIARY COMMITTEE, to PLEASE VOTE NO to SB 262 Monday morning at 8:00 a.m.

Sincerely;

Charlotte Komenda

Additional Documents
SENATE: Judiciary
Date: 2/16/15
Bill No. SB 262

Sunday, February 15, 2015

Mr. Chairman and Members of the Senate Judiciary Committee:

Please vote in OPPOSITION to SB 262, which goes way beyond simply assuring water for the Reservation. All citizens must have their fair share of water as called for in the Constitution. Only a "NO" VOTE protects water for ALL living in 11 counties west of the Continental Divide (farms, ranches, towns, cities).

IF PASSED, control goes from a State Managed Water Rights System to a small Reservation decision-making group. This bill is an insult and threat to the citizens of Montana undermining political integrity and threatening our personal and social economic well-being, security, and way of life, now and in the indefinite future.

I IMPLORE YOU, OUR HONORED LEGISLATOR ON THE SENATE JUDICIARY COMMITTEE, to PLEASE VOTE NO to SB 262 Monday morning at 8:00 a.m.

Sincerely,

Brock Dockery

Sig + Marc Iverson
Paradise Montana

**Additional Documents**

**SENATE: Judiciary**

**Date:** 2/16/15

**Bill No.** SB262

Because SB 262 will go on forever and will affect everyone, everyone should know how it will affect them and unborn generations.

After watching the proponents presentation 3 times there are still way too many unknowns. Why wasn't the other side given the opportunity? Probably could have cleared up a lot of questions if both sides had been present.

By the way who is Farmers & Ranchers for Montana? Is this what would be called a 'dark money' group if it was the other side

Does the phrase 'you have to pass it to find out what's in it apply here.

This may be a good deal but the 'You have to pass it now!' makes it look suspicious.

Please spend the next two years convincing the rest of us what a good deal it is. We're not stupid - if it's a good deal we'll like it.

The consensus now is that this is a much better compact than the original. Another two years is a nano second in forever

Additional Documents
SENATE: Judiciary
Date: 2/16/15
Bill No. SB262

**Schindler, Pam**

**From:** Jack Cochrane <jfcoch@cyberport.net>
**Sent:** Friday, February 13, 2015 2:22 PM
**To:** Schindler, Pam
**Subject:** SB 262--CSKT Water Compact

TO: Senate Judiciary Committee
Date: February 13, 2015
Subject: Confederated Salish and Kootenai Tribes (CSKT) water compact

PLEASE VOTE NO ON SB 262. I am convinced the CSKT water compact, will severely affect my off-reservation irrigation water permits (167 & 448 gpm).

On July 10, 2004, DNRC shutdown my irrigation system. Why? Drought. This will be repeated when other droughts occur.

If approved as currently written, the CSKT water compact WILL NOT PROTECT existing irrigation permits of more than 100 gpm. I WILL BE ADVERSELY IMPACTED because two of my irrigation water rights exceed 100 gpm.

PLEASE DON'T RUSH to get this CSKT water compact approved during this legislative session. Do you, our elected officials, truly understand the eternal impact of your vote on this CSKT water compact? Whatever decision is made will last "FOREVER" and will transfer Montana water rights to a foreign nation–the Confederated Salish and Kootenai Tribes.

Sincerely

John F. Cochrane
1725 Farm to Market Road
Kalispell, MT 59901
ph. 406-257-0965

Additional Documents
SENATE: Judiciary
Date: 2/16/15
Bill No. SB262

Legislators;

My concern with the CSKT Water Compact is what it will do to the Mission Valley Seed Potato Industry if the seed potato farmer does not receive the proper allocation of water for their crop this will eliminate the seed potato industry if the water compact is passed we know allocations of water will be reduced therefore possibly eliminating the Mission Valley Seed Potato Industry.
As I foresee it this will be a devastating blow to the UNITED STATES potato industry therefore I urge a no vote on SB262.

Thank You,

George D. Stone

February, 2015

duanegeo.stone@hotmail.com

Additional Documents
SENATE: Judiciary
Date: 2/16/15
Bill No. SB262

Legislators;

My concern with the CSKT Water Compact is what it will do to the Mission Valley Seed Potato Industry if the seed potato farmer does not receive the proper allocation of water for their crop this will eliminate the seed potato industry if the water compact is passed we know allocations of water will be reduced therefore possibly eliminating the Mission Valley Seed Potato Industry.
As I foresee it this will be a devastating blow to the UNITED STATES potato industry therefore I urge a no vote on SB262.

Thank You,

Gary D. Baertsch

February, 2015

Additional Documents
SENATE: Judiciary
Date: 2/16/15
Bill No. SB262

Legislators;

My concern with the CSKT Water Compact is what it will do to the Mission Valley Seed Potato Industry if the seed potato farmer does not receive the proper allocation of water for their crop this will eliminate the seed potato industry if the water compact is passed we know allocations of water will be reduced therefore possibly eliminating the Mission Valley Seed Potato Industry.
As I foresee it this will be a devastating blow to the UNITED STATES potato industry therefore I urge a no vote on SB262.

Thank You,

John Abat

February, 2015

Seed Grower

Additional Documents
SENATE: Judiciary
Date: 2/16/15
Bill No. SB262

Legislators;

My concern with the CSKT Water Compact is what it will do to the Mission Valley Seed Potato Industry if the seed potato farmer does not receive the proper allocation of water for their crop this will eliminate the seed potato industry if the water compact is passed we know allocations of water will be reduced therefore possibly eliminating the Mission Valley Seed Potato Industry.
As I foresee it this will be a devastating blow to the UNITED STATES potato industry therefore I urge a no vote on SB262.

Thank You,

David F Tolan

February, 2015

Jack Graves

Additional Documents
SENATE: Judiciary
Date: 2/16/15
Bill No. SB262

Legislators;

My concern with the CSKT Water Compact is what it will do to the Mission Valley Seed Potato Industry if the seed potato farmer does not receive the proper allocation of water for their crop this will eliminate the seed potato industry if the water compact is passed we know allocations of water will be reduced therefore possibly eliminating the Mission Valley Seed Potato Industry.
As I foresee it this will be a devastating blow to the UNITED STATES potato industry therefore I urge a no vote on SB262.

Thank You,

February, 2015

Sheila & Roy Vallejo
St. Ignatius, MT
farmer

Additional Documents
SENATE: Judiciary
Date: 2/16/15
Bill No. SB 262

Legislators;

My concern with the CSKT Water Compact is what it will do to the Mission Valley Seed Potato Industry if the seed potato farmer does not receive the proper allocation of water for their crop this will eliminate the seed potato industry if the water compact is passed we know allocations of water will be reduced therefore possibly eliminating the Mission Valley Seed Potato Industry.
As I foresee it this will be a devastating blow to the UNITED STATES potato industry therefore I urge a no vote on SB262.

Thank You,

Carol Lyons

February, 2015

St. Ignatius

Rancher

Additional Documents
SENATE: Judiciary
Date: 2/16/15
Bill No. SB262

Legislators;

My concern with the CSKT Water Compact is what it will do to the Mission Valley Seed Potato Industry if the seed potato farmer does not receive the proper allocation of water for their crop this will eliminate the seed potato industry if the water compact is passed we know allocations of water will be reduced therefore possibly eliminating the Mission Valley Seed Potato Industry.
As I foresee it this will be a devastating blow to the UNITED STATES potato industry therefore I urge a no vote on SB262.

Thank You,

February, 2015

Seed Grower — Steve Abel

Additional Documents
SENATE: Judiciary
Date: 2/16/15
Bill No. SB262

Legislators;

My concern with the CSKT Water Compact is what it will do to the Mission Valley Seed Potato Industry if the seed potato farmer does not receive the proper allocation of water for their crop this will eliminate the seed potato industry if the water compact is passed we know allocations of water will be reduced therefore possibly eliminating the Mission Valley Seed Potato Industry.
As I foresee it this will be a devastating blow to the UNITED STATES potato industry therefore I urge a no vote on SB262.

Thank You,

Dawn Bone Cole

February, 2015

Additional Documents
SENATE: Judiciary
Date: 2/16/15
Bill No. SB262

Legislators:

My concern with the CSKT Water Compact is what it will do to the Mission Valley Seed Potato Industry. If the seed potato farmer does not receive the proper allocation of water for their crops, it will eliminate the seed potato industry. If the water compact is passed we know allocations of water will be reduced therefore possibly eliminating the Mission Valley Seed Potato Industry.

As I foresee it, this will be a devastating blow to the UNITED STATES potato industry; therefore, I urge a NO vote on SB262.

Thank you,

Joe Eisenbrandt Sr.

February 2015

Joe Eisonbrandt
Plains, MT

Additional Documents
SENATE: Judiciary
Date: 2/16/15
Bill No. SB262

Legislators:

My concern with the CSKT Water Compact is what it will do to the Mission Valley Seed Potato Industry. If the seed potato farmer does not receive the proper allocation of water for their crops, it will eliminate the seed potato industry. If the water compact is passed we know allocations of water will be reduced therefore possibly eliminating the Mission Valley Seed Potato Industry.

As I foresee it, this will be a devastating blow to the UNITED STATES potato industry; therefore, I urge a NO vote on SB262.

Thank you,

Karen Eisenbrandt

February 2015

KAREN EISONBRANDT
PLAINS, MT

Additional Documents
SENATE: Judiciary
Date: 2/16/15
Bill No. SB262

Legislators;

My concern with the CSKT Water Compact is what it will do to the Mission Valley Seed Potato Industry if the seed potato farmer does not receive the proper allocation of water for their crop this will eliminate the seed potato industry if the water compact is passed we know allocations of water will be reduced therefore possibly eliminating the Mission Valley Seed Potato Industry.
As I foresee it this will be a devastating blow to the UNITED STATES potato industry therefore I urge a no vote on SB262.

Thank You,

February, 2015

LARRY CHRISTENSON
PLAINS, MONTANA

Additional Documents
SENATE: Judiciary
Date: 2/16/15
Bill No. SB262

Legislators;

My concern with the CSKT Water Compact is what it will do to the Mission Valley Seed Potato Industry if the seed potato farmer does not receive the proper allocation of water for their crop this will eliminate the seed potato industry if the water compact is passed we know allocations of water will be reduced therefore possibly eliminating the Mission Valley Seed Potato Industry.
As I foresee it this will be a devastating blow to the UNITED STATES potato industry therefore I urge a no vote on SB262.

Thank You,
Maryann Knutson

February, 2015

MARYANN KNUTSON
PLAINS, MONTANA

Additional Documents
SENATE: Judiciary
Date: 2/16/15
Bill No. SB 262

Legislators;

My concern with the CSKT Water Compact is what it will do to the Mission Valley Seed Potato Industry if the seed potato farmer does not receive the proper allocation of water for their crop this will eliminate the seed potato industry if the water compact is passed we know allocations of water will be reduced therefore possibly eliminating the Mission Valley Seed Potato Industry.
As I foresee it this will be a devastating blow to the UNITED STATES potato industry therefore I urge a no vote on SB262.

Thank You,
Kenneth D. Baker

February, 2015

Kenneth D. Baker
Plains, Montana

Additional Documents
SENATE: Judiciary
Date: 2/16/15
Bill No. SB 262

Legislators;

My concern with the CSKT Water Compact is what it will do to the Mission Valley Seed Potato Industry if the seed potato farmer does not receive the proper allocation of water for their crop this will eliminate the seed potato industry if the water compact is passed we know allocations of water will be reduced therefore possibly eliminating the Mission Valley Seed Potato Industry.
As I foresee it this will be a devastating blow to the UNITED STATES potato industry therefore I urge a no vote on SB262.

Thank You,

Warren Wickum
P.O. Box 1314
Plains, MT

February, 2015

Additional Documents
SENATE: Judiciary
Date: 2/16/15
Bill No. SB 262

Legislators;

My concern with the CSKT Water Compact is what it will do to the Mission Valley Seed Potato Industry if the seed potato farmer does not receive the proper allocation of water for their crop this will eliminate the seed potato industry if the water compact is passed we know allocations of water will be reduced therefore possibly eliminating the Mission Valley Seed Potato Industry.
As I foresee it this will be a devastating blow to the UNITED STATES potato industry therefore I urge a no vote on SB262.

Thank You,
Glenda Kolb

February, 2015

Glenda Kolb
Paradise, Montana

Additional Documents
SENATE: Judiciary
Date: 2/16/15
Bill No. SB262

Legislators;

My concern with the CSKT Water Compact is what it will do to the Mission Valley Seed Potato Industry if the seed potato farmer does not receive the proper allocation of water for their crop this will eliminate the seed potato industry if the water compact is passed we know allocations of water will be reduced therefore possibly eliminating the Mission Valley Seed Potato Industry.
As I foresee it this will be a devastating blow to the UNITED STATES potato industry therefore I urge a no vote on SB262.

Thank You,

Eugene Kolb

February, 2015

Eugene Kolb
Paradise, Montana

Additional Documents
SENATE: Judiciary
Date: 2/16/15
Bill No. SB262

Legislators;

My concern with the CSKT Water Compact is what it will do to the Mission Valley Seed Potato Industry if the seed potato farmer does not receive the proper allocation of water for their crop this will eliminate the seed potato industry if the water compact is passed we know allocations of water will be reduced therefore possibly eliminating the Mission Valley Seed Potato Industry.
As I foresee it this will be a devastating blow to the UNITED STATES potato industry therefore I urge a no vote on SB262.

Thank You,

Ann Baker

February, 2015

ANN BAKER
PLAINS, MONTANA

Additional Documents
SENATE: Judiciary
Date: 2/16/15
Bill No. SB262

Legislators;

My concern with the CSKT Water Compact is what it will do to the Mission Valley Seed Potato Industry if the seed potato farmer does not receive the proper allocation of water for their crop this will eliminate the seed potato industry if the water compact is passed we know allocations of water will be reduced therefore possibly eliminating the Mission Valley Seed Potato Industry.
As I foresee it this will be a devastating blow to the UNITED STATES potato industry therefore I urge a no vote on SB262.

Thank You,

Kim Lavon Robinson

February, 2015

Kim Lavon Robinson
Plains MT

Additional Documents
SENATE: Judiciary
Date: 2/16/15
Bill No. SB262

Legislators;

My concern with the CSKT Water Compact is what it will do to the Mission Valley Seed Potato Industry if the seed potato farmer does not receive the proper allocation of water for their crop this will eliminate the seed potato industry if the water compact is passed we know allocations of water will be reduced therefore possibly eliminating the Mission Valley Seed Potato Industry.
As I foresee it this will be a devastating blow to the UNITED STATES potato industry therefore I urge a no vote on SB262.

Thank You,

February, 2015

Ludwig Roeder
Plains, Montana

Additional Documents
SENATE: Judiciary
Date: 2/16/15
Bill No. SB262

for, and for said water by it conveyed, or to be conveyed, from said point of appropriation to said land or point of final discharge, and also the right of location upon any lands of any dams, flumes, reservoirs, constructed or to be constructed, by United States in appropriating and in using said water.

VI. That the said United States also claims the right to keep in repair and to enlarge said means of water appropriation at any time, and the right to dispose of said right, water, ditch or said appurtenances in part or whole at any time.

Claiming the same all and singular, under any and all laws, National and State and in accordance with the rulings and decisions thereunder, in the matter of water rights.

TOGETHER with all and singular, the heriditaments and appurtenances thereunto belonging and appertaining or to accrue to the same.

THE UNITED STATES OF AMERICA,

By H. N. Savage

Its officer and agent in that behalf and thereunto duly authorized by the Secretary of the Interior.

State of Montana, )
(ss
County of Lewis & Clark. )

H. N. Savage, having first been duly sworn, deposes and says, that he is of lawful age and an officer and agent of the United States of America, the appropriator and claimant of the waterand water right mentioned in the foregoing notice of appropriation and claim, and that affiant makes the said appropriation of said water and claims the said water right for and on behalf of the said United States as its agent thereunto duly authorized, that affiant is the person whose name is subscribed thereto as officer and agent ofthe appropriator and claimant, the said United States; that he knows the contents of the said foregoing notice and that the matters and things therein stated are true.

H. N. Savage

Subscribed and sworn to before me, this 27th day of December, A. D. 1909.

Julius Barney

(SEAL)

Notary Public in and for the State of Montana, residing at Helena, Montana. My commission expires June 19, 1910.

Recorded at request of M. F. Taber, this 3rd day of January, 1910 at 9-05 oclock AM.

C. T. Young, County Recorder.

No. 4880

By J. R. Sauser, Deputy.

Transcribed from Flathead County Records, Book 71 Water Rights, Page 400.

NOTICE OF APPROPRIATION

The United States of America, )
State of Montana (ss
County of Flathead. ) TO ALL WHOM THESE PRESENTS MAY CONCERN:

BE IT KNOWN That the United States of America, under and by virtue of an Act of the Legislative Assembly of the State of Montana, entitled " An Act authorizing the Government of the United States to appropriate the waters of the streams in the State of Montana, subject to certain restrictions ", approved February 27, 1905, and acting by and through H. N. Savage Supervising Engineer, thereunto duly authorized by the Secretary of the Interior of the said

H. Kho-Ruggles Stock Co., Butte

United States in that behalf, does hereby publish and declare as a legal notice to all the world as follows, to-wit:

1. That the said United States has a legal right to the use, possession and control of and claims 100,000 cubic feet per second of the waters of Flathead River in said County and State for irrigating and other purposes.

11. That the purpose for which said water is claimed, and the place of intended use is for the purpose of irrigating 50,000 acres of land on the Flathead Indian Reservation, for domestic uses, and for developing power for pumping and other purposes.

111. That the means of diversion, with size of flume, ditch, pipe or acqueduct, by which it is intended to divert the said water, is as follows: A dam and tunnel 11 x 11 feet and such other tunnels as are needed and pumps, pipes and canals to carry water to the land. Said tunnels are to lead to suitable machinery to pump water and furnish power for other purposes, and pipe lines and pumps are to be located south-west of Polson at the Big Rock Rapids and at such other points as are suited to reach the lands requiring irrigation. the lands to be irrigated lie in Tps. 20,21, 22N. Rs 19,20 21 and 22 W. M. P. M. The development of power is contemplated by turbines located at the outlet of the proposed tunnels and at such points along the river as proper fall exist, thruout the Reservation.

1V. That the said United States of America, is the appropriator of said water and said appropriation was made on the 27" day of December, A. D. 1910, and said appropriation and the diversion of said waters is to be effected and consummated by means of said dam, tunnels, pumps, pipes and canals.

V. That the said United States also hereby claims said ditch and the right of way therefor, and for said water by it conveyed, or to be conveyed, from said point of appropriation to said landor point of final discharge, and also the right of location upon any lands of any dams, flumes, reservoirs, constructed or to be constructed by United States in appropriating, and inusing said water.

V1. That the said United States also claims the right to keep inrepair and to enlarge said means of water appropriation at any time, and the right to dispose of said right, water, ditch, or said appurtenances in part or whole at any time.

CLAIMING the same, all and singular, under any and all laws, National and State and in accordance with the rulings and decisions thereunder ,in the matter of water rights.

TOGETHER with all and singular, the heriditaments thereunto belonging and appertaining or to accrue to the same.

THE UNITED STATES OF AMERICA

By H. N. Savage

Its officer and agent in that behalf and thereunto duly authorized by the Secretary of the Interior.

State of Montana, )
(ss
County of Lewis & Clark.

H. N. Savage, having first been duly sworn, deposes and says, that he is of lawful age and an officer and agent of the United States of America, the appropriator and claimant of the water and the water right mentioned in the foregoing notice of appropriation and claim, and that affiant makes the said appropriation of said water and claims the said water right for and on behalf of the said United States, as its agent thereunto duly authorized, that affiant is the person whose name is subscribed thereto as officer and agent of the appropriator and claimant, the said United States; that he knows the contents of the said foregoing

notice and that the matters and things therein stated are true.

H. N. Savage

Subscribed and sworn to before me this 27th day of Dec. A. D. 1909.

Julius Barney

Notary Public in and for the State of Montana, residing at Helena, Montana. My Commission expires June 19, 1910.

(SEAL)

Recorded at request of E. P. Tabor, this 3rd day of Jan. 1910 at 9-06 oclock AM.

C. T. Young, County Recorder.

By J. R. Sauser, Deputy.

R/W No. 4881-

Transcribed from Flathead County Records, Book 71 Water Rights, Page 401.

NOTICE OF WATER APPROPRIATION

TO WHOM THESE PRESENTS MAY CONCERN: I, Francis P. Ryder, of Bigfork, Montana, by virtue of Sections 4840 to 4891 inclusive of the Revised Codes of Montana, and all acts amendatory thereof, have appropriated and hereby do appropriate two and one half cubic feet per second of time of the waters of Glen Creek which runs through sections twenty-two twenty-eight and twenty-nine of Township twenty -five north, range nineteen west, emptying into Flathead Lake in said Section twenty-nine in Flathead County, Montana.

Said water is claimed and appropriated for mining , mechanical, industrial, irrigating, domestic and other useful and beneficial uses and purposes upon the following described land, situate in said County, to-wit:

The most northerly three quarters in width of Lot three in section twenty, and the most northerly three quarters in width of the northwest quarter of the southwest quarter of section twenty-one, township and range aforesaid.

Saidwaters are to be diverted from said stream by means of a ditch thirty inches in width on the bottom and ten inches in depth at a point on the right bank thereof where the notice of appropriation is posted on a fir tree in said creek about ten rods below a large rock slide ( being the first rock slide above the mouth of said creek) which is in the north central part of the northwest quarter of the northeast quarter of said section twenty- eight. The date of said appropriation is the thirtieth day of December nineteen hundred nine. The name of the appropriator is Francis P. Ryder.

Witness my hand this fourteenth day of January, in the year nineteen hundred ten.

Francis P. Ryder

[ Notary. Seal]

State of Montana, )
) ss
County of Flathead. )

Francis P. Ryder, being first duly sworn, says: That he is the appropriator named in the and the person whose name is subscribed to the foregoing notice of water appropriation; that he has read such notice and knows the contents thereof, and that the statements therein made are true.

Francis P. Ryder

The Rotarie Stock Co., Butte

Subscribed and sworn to before me, this fourteen th day of January in the year nineteen hundred ten.

C. H. Foot
Notary Public for the State of Montana, residing at Kalispell, Montana. My Commission expires August 10, 1912.

(SEAL)

Recorded at request of F. O. Williams this 15th day of Jan. 1910 , at 4-50 oclock PM.
C. T. Young, County Recorder.
By Fred S. Perry, Deputy.

No. 5144-

Transcribed from Flathead County Records, Book 71 Water Rights, Page 403.

NOTICE OF APPROPRIATION

The United States of America, )
State of Montana (ss
County of Flathead ) TO ALL WHOM THESE PRESENTS MAY CONCERN:

BE IT KNOWN, That the United States of America, under and by virtue on an Act of the Legislative Assembly of the State of Montana, entitled ; " An act authorizing the Government of the United States to appropriate the water of the streams in the State of Montana, subject to certain restrictions", approved February 27, 1905, and acting by and through H. N. Savage, Supervising Engineer, thereunto duly authorized by the Secretary of the Interior of the said United States in that behalf, does hereby publish and declare as a legal notice to all the world, as follows, to-wit:

I. That the said United States has a legal right to the use, possession and control of and claims 100,000 cubic feet per second of the waters of The Flathead River in said County and State, for irrigating and other purposes.

II. That the purpose for which said water is claimed and the place of intended use is for the purpose of irrigating 50,000 acres of land on the Flathead Indian Reservation for domestic uses, and for developing power for pumping and other purposes.

III. That the means of diversion, with size of flume, ditch, pipe or aqueduct, by which it is intended to divert the said water, is as follows; a dam or dams and tunnel 11 x 11 feet and such other tunnels as are needed and pumps, pipes and canals to carry the water to the land. Said tunnels are to leadto suitable machinery to pump water and furnish power for other purposes, and pipe lines and pumps are to be located southeast of Polson at the Big Rock Rapids and at such other points as are suited to reach the lands requiring irrigation. the lands to be irrigated lie in Tps. 20, 21, 22 N. Rs 19 20, 21 & 22, W. M. P. M. The development of power is contemplated by turbines located at the outlet of the proposed tunnels and at such other points along the river as proper fall exist, thruout the Reservation.

IV. That the said United States of America is the appropriator of said water and said appropriation was made on the 22 day of Jan. A. D. 1910 and said appropriation and the diversion of said waters is to be effected and consummated by means of said dams, tunnels, pumps, pipes and canals.

V. That the said United States also hereby claims said ditch and the right of way therefor, and for said water by it conveyed, or to be conveyed, from said point of appropriation to said land or point of final discharge, and also the right of location upon any lands of

any dams, flumes, reservoirs, constructed or to be constructed, by the United States, in appropriating , and inusing said water.

VI. That the said United States also claims the right to keep in repair and to enlarge said means of water appropriation at any time and the right to dispose of said right, water, ditch or said appurtenances, in part or whole at any time.

CLAIMING the same, all and singular, under any and all laws, Nation al and State, and in accordance with the rulings and decisions thereunder in the matter of water rights. TOGETHER WITH ALL AND SINGULAR the heriditaments , and appurtenances thereunto belonging and appertaining or to accrue to the same.

THE UNITED STATES OF AMERICA

By H. N. Savage,

Its officer and agent in that behalf and thereunto duly authorized by the Secretary of the Interior.

State of Montana, )
(ss
County of Missoula. )

H. N. Savage, having first been duly sworn , deposes and says that he is of lawful age and an officer and agent ofthe United States of America the appropriator and claimant of the water and the water right mentioned in the foregoing notice of appropriationand claim and that affiant makes the said appropriation of said water and claims the said water right for and on behalf of the said United States as its agent thereunto duly authorized, that affiant is the person whose name is subscribed thereto as officer and agent of the appropriator and claimant, the said United States; that he knows the contents of said foregoing notice and that the matters therein stated are true.

H. N. Savage

Subscribed and sworn to before me this 21 day of Jan. A. D. 1910.

George H. Beckwith

Notary Public for the State of Montana, residing at St. Ignatius, Missoula County, My commission expires ninth day of Sept. 1911.

(SEAL)

Recorded at request of E. F. Tabor Jany 28th, 1910. C. T. Young, Co. Recorder.

No. 5278-

**********

Transcribed from Flathead County Records, Book 71 Water Rights, Page 405.

Location of Water Right.

NOTICE OF APPROPRIATION

State of Montana, )
(ss To All whom these Presents may Concern:-
County of Flathead. )

BE IT KNOWN, That Lucinda Markle of Camas in the County of Sanders in the State of Montana, does hereby publish and declare, as a legal notice to all the world, as follows, to-wit;

That Lucinda Markle has a legal right to the use, possession and control of and claims one Hundred (100) inches , Miners' measurement, equal to 2½ cubic feet, of the waters of a certain spring and seepage therefrom in the County and State aforesaid, for irrigating and other useful and beneficial purposes.

That the purpose for which said water is claimed is irrigating, domestic and other beneficial purposes.

That the place of intended use is on W½ NW¼ Section 2, and E½ of NE¼ of Section 3 in Township 22 north range 23 west of the Montana Meridian.

That the means of diversion with size of flume, ditch ,pipe or acqueduct, by which she intends to divert the said water is as follows;- a ditch 24 inches by 10 inches in size which carries and conducts 100 inches, miners' measurement, equal to 2½ cubic feet of water from said spring and seepage which said ditch diverts the water from said spring and runs thence easterly thence over and upon said land.

That Lucinda Markle appropriated and took said water on the 30th day of January, A. D. 1910, by means of said ditch.

That the name of the appropriator ofsaid water is Lucinda Markle.

That Lucinda Markle also hereby claims said ditch and the right of way therefom, and for said water by it conveyed, or to be conveyed from said point of appropriation to said land or point of final discharge, and also the right of location upon any lands, of any dams, flumes, reservoirs, constructed or to be constructed by said Lucinda Markle in appropriating and using said water.

That she also claims theright to keep in repair and to enlarge said means of water appropriation at any time, and the right to dispose of the said right, water, ditch or said appurtenances in part or whole at any time.

Claiming the same all and singular, under any and all laws, national or state, acts of Congress and Federal and State Court rulings and decisions thereunder, in the matter of water rights.

Together with all and singular, the hereditaments and appurtenances thereunto belonging and appertaining or to accrue to the same.

Witness my hand at Thompson, Montana, this 3rd day of February, 1910.

Lucinda Markle, Claimant

By W. Markle, Her father and Natural Guardian and her agent.

State of Montana,, )
(ss
County of Sanders, )

W. Markle being first duly sworn on his oath deposes and says;- that he is of lawful age and the father and natural guardian of Lucinda Markle , the appropriator and claimant of the water and water right mentioned in the foregoing notice of appropriation and claim and that he makes this affidavit for and on behalf of ~~the~~ said appropriator and claimant; that he has read the foregoing notice of appropriation and claim and knows the contents thereof, and that the matters and things therein set forth are true of his own knowledge.

W. Markle

Subscribed and sworn to before me this 3rd day of February, 1910.

W. E. Nippert

(SEAL) Clerk of the District Court, Sanders County, Montana.

Recorded at the request of W. Markle, this 19th day of February, 1910 at 2-55 oclock PM.

O. T. Young, County Recorder.

No. 5568-

R/D

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Transcribed from Flathead County Records, Book 71 Water Rights, Page 406.

NOTICE OF APPROPRIATION

The United States of America )
State of Montana (ss
County of Flathead ) TO ALL WHOM THESE PRESENTS MAY CONCERN:

BE IT KNOWN, That the United States of America, under and by virtue of an Act of the Legislative Assembly of the State of Montana, entitled: " An Act authorizing the Government of the United States to appropriate the waters of the streams in the State of Montana, subject to certain restrictions", approved February 27, 1905, and acting by and through H. N. Savage, Supervising Engineer, thereunto duly authorized by the Secretary of the Interior of the said United States in that behalf, does hereby publish and declare as a legal notice to all the world, as follows, to-wit:

I. That the said United States has a legal right to the use, possession and control of and claims 100,000 cubic feet per second of the waters of Flathead River insaid County and State, for irrigating and other purposes.

II. That the purpose for which said water is claimed , and the place of intended use is for the purpose of irrigating 50,000 acres of land on the Flathead Indian Reservation, for domestic uses, and for developing power for pumping and other purposes.

III. That the means of diversion with size of flume, ditch, pipe or acqueduct by which it is intended to divert the said water is as follows; a dam across the river near this notice and canals and tunnels with a capacity of ten thousand second feet leading fromsame to a power house, suitable hydraulic and electric machinery to develop power and to elevate water to the bench lands along the river together with pumps, pipes flumes, reservoirs and canals to convey, store and distribute water to the lands described including electric transmission lines to convey power to distant points for pumping water and other purposes, the lands to be irrigated lie in Tps. 19 to 25 N. Rs. 19 to 22 W. M. P. M. The development of power is contemplated by turbines at above named power house and at other suitable sites within the Flathead Indian Reservation.

IV. That the said United States of America is the appropriator of said water and said appropriation was made on the 29th day of March A. D. 1910, and said appropriation and the diversion of said waters is to be effected and consummated by means of said dams, cuts, tunnels, pumps, pipes, reservoirs, flumes, canals and hydraulic and electric machinery.

V. That the said United States also hereby claims said ditch and the right of way therefor, and for said water by it conveyed, or to be conveyed, from said point of appropriation to said land or point of final discharge, and also the right of location upon any lands of any dams, flumes, reservoirs, constructed or to be constructed, by the United States in appropriating , and insing said water.

VI. That the said United States also claims the right to keep in repair and to enlarge said means of water appropriation at any time, and the right to dispose of said right, water ditch or said appurtenances in part or whole at any time.

Claiming the same, all and singular, under any and all laws, National And State, and in accordance with the rulings and decisions thereunder, in the matter of water rights.

Together with all and singular, the heriditaments and appurtenances thereunto belonging and appertaining, or to accrue to the same.

11-200-Brown Stck Co., Butte

The United States of America
By H. N. Savage
Its Officer and agent in that behalf and thereunto duly authorized by the Secretary of the Interior.

State of Montana, )
County of Lewis & Clark. ) (ss

H. N.Savage having first been duly sworn, deposes and says, that he is of lawful age and an officer and agent of the United States of America, the appropriator and claim ant of the water and the water right mentioned in the foregoing notice of appropriation and claim, and that affiant makes the said appropriation of said water and claims the said water right for and on behalf of the said United States, as its agent thereunto duly authorized that affiant is the person whose name is subscribed thereto as the officer and agent of the appropriator and claimant, the said United States; that he knows the contents of the said foregoing notice and that the matters and things therein stated are true.

H. N. Savage

Subscribed and sworn to before me this 29th day of March, A. D. 1910.

Julius Barney

(Julius Barney)
(Notarial Seal)
(Lewis & Clark County, Montana)

Notary Public in and for the State of Montana, residing at Helena, Mont. My commission expires June 19th, 1910.

Recorded at request of E. F. Tabor this 11th day of April, 1910 at 2-20 oclock PM.

C. T.Young, County Recorder.
By Fred S. Perry, Deputy.

No. 6304-

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Transcribed from Flathead County Records, Book 71 Water Rights, Page 408.

NOTICE OF APPROPRIATION

The United States of America, )
State of Montana (ss
County of Flathead. ) TO ALL WHOM THESE PRESENTS MAY CONCERN:

BE IT KNOWN, That the United States of America, under and by virtue of an act of the Legislative Assembly of the State of Montana, entitled: " An Act authorizing the Government of the United States to appropriate the water of the streams in the State of Montana, subject to certain restrictions", approved February 27, 1905, and acting by and through H. N. Savage, Supervising Engineer, thereunto duly authorized by the Secretary of the Interior of the said United States in that behalf, does hereby publish and declare as a legal notice to all the world, as follows, to-wit;

1. That the said United States has a legal right to the use, possession and control of and claims 100,000 cubic feet per second of the waters of the Flathead River in said County and State, for irrigating and other purposes.

11. That the purpose for which said water is claimed, and the place of intended use is for the purpose of irrigating 60,000 acres of land on the Flathead Indian Reservation for domestic uses and for developing power for pumping and other purposes.

III. That the means of diversion with size of flumes, ditch, pipe or acqueduct, by which it is intended to divert the said water is as follows; a dam where this notice is posted, a tunnel 11 x 11 feet leading from this point to a power house, also such other dams and tunnels & canals as are needed to fully utilize the water claimed; pumping plants at the Big Rock rapids and other other suitable points, pipe lines, flumes, reservoirs and canal systems to elevate, convey, store and distribute water to the lands described and needing irrigation and also such other works as will fully utilize all the fall available in the Flathead River within the Flathead Indian Reservation, including hydraulic and electric machinery, and transmission lines to develop power and convey it to points of use for pumping and other purposes. the lands to be irrigated lie in Tps. 19 to 25 N.Rs. 19 to 22 W. M. P. M. The development of power is contemplated by turbines at the above named and other suitable points on Flathead river together with necessary dams, canals, penstocks and other hydraulic and electric appliances.

IV. That the said United States of America is the appropriator of said water and said appropriation was made on the 29th day of March, A. D. 1910 and said appropriation and the diversion of said waters is to be effected and consummated by means of said dams, tunnels, pumps, pipes, reservoirs, canals and hydraulic and electric machinery.

V. That the said United States hereby also claims said ditch and the right of way therefor, and for said water by it conveyed, or to be conveyed, from said point of appropriation to said land or point of final discharge, and also the right of location upon any lands of any dams, flumes, reservoirs, constructed or to be constructed, by the United States in appropriating and in using said water.

VI. That the said United States also claims the right to keep in repair and to enlarge said means of water appropriation at any time, and the right to dispose of said right, water, ditch or said appurtenances in part or whole , at any time.

Claiming the same, all and singular, under any and all laws, National and State, and in accordance with the rulings and decisions thereunder, in the matter of water rights.

Together with all and singular, the heriditaments and appurtenances thereunto belonging and appertaining, or to accrue to the same.

The United States of America

By H. N. Savage, Its officer and agent in that behalf, and thereunto duly authorized by the Secretary of the Interior.

State of Montana, )
(ss
County of Lewis & Clark. )

H. N. Savage having first been duly sworn, deposes and says that he is of lawful age and an officer and agent of the United States of America, the appropriator and claimant of the water and the water right mentioned in the foregoing notice of appropriation and claim, and that affient makes the said appropriation of said water and claims the said water right for and on behalf of the said United States, as its agent thereunto duly authorized, that affient is the person whose name is subscribed thereto as officer and agent of the appropriator and claimant, the said United States; that he knows the contents of the said foregoing notice, and that the matters and things therein stated are true.

H. N. Savage

Subscribed and sworn to before me, this 29" day of March A . D. 1910

Julius Barney

Notary Public in and for the State of Montana, residing at Helena, Mont. My commission expires June 19th, 1910.

) Julius Barney)
(Notarial Seal)
( Lewis & Clark)
(County, Montana)

Recorded at request of E. F. Tabor this 11th day of April, 1910 at 2-21 oclock PM.

C. T. Young, County Recorder.

By Fred S. Perry, Deputy.

No. 6305.

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Transcribed from Flathead County Records, Book 71 Water Rights, Page 409.

NOTICE OF APPROPRIATION

The United States of America )
State of Montana ( ss
County of Flathead. ) TO ALL WHOM THESE PRESENTS MAY CONCERN:

BE IT KNOWN, That the United States of America, under and by virtue of an Act of the Legislative Assembly of the State of Montana, entitled : " An Act authorizing the Government of the United States to appropriate the water of the streams in the State of Montana, subject to certain restrictions", approved February 27, 1905, and acting by and through H. N. Savage, Supervising Engineer, thereunto duly authorized by the Secretary of the Interior of the said United States in that behalf, does hereby publish and declare as a legal notice to all the world, as follows, to-wit:

I. That the said United States has a legal right to the use, possession and control of and claims 100,000 cubic feet per second of the waters of the Flathead river in said County and State, for irrigating and other purposes.

II. That the purpose for which said water is claimed, and the place of intended use is for the purpose of irrigating 50,000 acres of land on the Flathead Indian Reservation, for domestic uses, and for developing power for pumping and other purposes.

III. That the means of diversion, with size of flume, ditch, pipe or aequeduct by which it is intended to divert the said water, is as follows: a dam across the river near this notice and tunnels and open cuts leading from the river having an area of 1000 square feet, conveying water to a power house situated about one half mile west hereof, and such pumps, pipes, reservoirs, flumes and canals as are necessary to raise, convey, store and distribute water to the lands described, also such hydraulic and electric machinery as will be needed to develop convey and apply power for pumping and other purposes. the lands to be irrigated lie in Tps. 19 to 25 N. Rs. 19 to 22 W. M. P. M. The development of power is contemplated by turbines at above named power house and other suitable sites within the Flathead Indian Reservation.

IV. That the said United States of America is the appropriator of said water , and said appropriation was made on the 29" day of March. A. D. 1910, and said appropriation and the diversion of said waters is to be effected and consummated by means of said dams, tunnels, cuts, pumps, pipes, reservoirs, flumes and canals and hydraulic and electric machinery.

V. That the said United States also hereby claims said ditch and the right of way therefor, and for said water by it conveyed, or to be conveyed, from said point of appropriation to said land or point of final discharge, and also the right of location upon any lands of

any dams, flumes, reservoirs, constructed or to be constructed by the United States in appropriating, and inusing said water.

VI. That the said United States also claims the right to keep in repair and to enlarge said means of water appropriation at any time, and the right to dispose of said right, water, ditch or said appurtenances in part or whole, a t any time.

Claiming the same, all and singular, under any and all laws, national and state and in accordance with the rulings and decisions thereunder, in the matter of water rights.

Together with all and singular, the heriditaments thereunto belonging and appertaining or toaccrue to the same.

The United States of America

By H. N. Savage, Its officer and agent in that behalf and thereunto duly authorized by the Secretary of the Interior.

State of Montana, )
County of Lewis & Clark. ) (ss

H. N. Savage, having first been duly sworn, deposes and says, that he is of lawful age, and an officer and agent ofthe United States of America, the appropriator and claimant of the water and the water right mentioned in the foregoing notice of appropriationand claim, and that affiant makes the said appropriation of said water and claims the said water right for and on behalf of the said United States, as its agent thereunto duly authorized, that affiant is the person whose name is subscribed thereto as officer and agent of the appropriator and claimant the said United States; that he knows the contents of the said foregoing notice and that the matters and things therein stated are true.

H. N. Savage

Subscribed and sworn to before me this 29th day of March, A. D. 1910.

Julius Barney

(Julius Barney) Notary Public in and for the State of Montana, residing at Helena,
(Notarial Seal) Mont. My commission expires June 19th, 1910.
(Lewis & Clark)
(County, Montana)

Recorded at request of E. F. Taber this 11th day of April, 1910 at 2-28 oclock PM.

C. T. Young, County Recorder.

By Fred S. Perry, Deputy.

No. 6305-

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Transcribed from Flathead County Records, Book 71 Water Rights, Page 411.

NOTICE OF APPROPRIATION

State of Montana, )
County of Flathead. ) ss

To All Whom These Presents May Concern:

Be it Known, that Henry Fisher of Helena, Lewis and Clark County and State, do hereby publish and declare , as a legal notice to all the world, as follows, to-wit:

1. That he ha- a legal right to the use, possession and control of and claims 500 inches of the waters of School Meadow Creek in said County and state, for irrigating and other purposes.

Additional Documents
SENATE: Judiciary
Date: 2/16/15
Bill No. SB262

**PETITION REQUESTING LEGISLATORS TO VOTE AGAINST THE CSKT WATER RIGHTS COMPACT**

**WHEREAS,** the negotiating parties for the CSKT Reserved Water Rights Compact concede western Montana water rights to Federal and Tribal governments with complete disregard of historical acts by the Federal Government to "open" the reservation to homesteading,

**WHEREAS,** the proposed compact will give the CSKT legal title to all the water in the Flathead Irrigation Project (FIP) although 90% of the lands under the project are not tribally owned, and water deliveries to irrigators will be reduced by as much as 70%,

**WHEREAS**, the compact documents have far reaching environmental and economic implications that have been largely ignored by the state,

**WHEREAS**, the Unitary Management Ordinance also known as the "Grand Bargain", is designed to unconstitutionally remove all citizens within the exterior boundaries of the Flathead Reservation from under state jurisdiction concerning our water rights,

**WHEREAS**, the off reservation water claims in this compact are out of the scope of the compact commission and are not Federal Reserved Water Rights,

**WHEREAS,** I adamantly do not agree with, oppose and will oppose in any way possible any government or legislative action that will result in the United States in trust for the CSKT, or the CSKT owning or controlling any aspect of the property rights of others up to and including the fee title and associated water rights.

**THEREFORE**, I (we) demand our legislature:

1. To vote against the approval of the CSKT Water Compact brought before the legislature in this current session
2. To allow the compact commission to sunset and move the tribal federal reserved water right decisions into the Montana General Stream Adjudication Process.
3. To take the necessary steps to reaffirm the rights of Montanans to control the natural resource of water within the boundaries of the State of Montana as is guaranteed by our state Constitution.

| DATE | SIGNATURE | TOWN |
|---|---|---|
| 1/29 | Jerry McKeon | Seeley Lake MT Dixon MT |
| 1/29 | Steve D. Baker | Greenough MT |
| 1/29 | Gina Klempel | Kalispell, Mt. |
| 1/29 | | Seeley Lake MT. |

6

**PETITION REQUESTING LEGISLATORS TO VOTE AGAINST THE CSKT WATER RIGHTS COMPACT**

| DATE | SIGNATURE | TOWN |
|---|---|---|
| 2-7-15 | [signature] | Bigfork MT |
| 2/8/15 | [signature] | Kalispell MT |
| 2/8/15 | [signature] | Kalispell |
| 2/8/15 | Kristy West | Kalispell, MT |
| 2-8-15 | [signature] | Kalispell, MT |
| 2-8-15 | Robin Blakney | Kalispell, MT |
| 2-8-15 | Heath Blakney | Kalispell, MT |
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**PETITION REQUESTING LEGISLATORS TO VOTE AGAINST THE CSKT WATER RIGHTS COMPACT**

| DATE | SIGNATURE | TOWN |
|---|---|---|
| 2/1/2015 | | Kalispell. |
| 2/1/2015 | Dave O'Brien | Kila |
| 2-1-15 | Peter Mason | Lakeside, MT |
| | Luke Johnson | Kalispell MT |
| 2-1-15 | | Kalispell, Mt |
| 2-1-15 | Josh Jonkerling | Kalispell MT |
| 2/1/15 | | Kila, MT |
| 2/1/15 | Brian Downing | Marion Mt. |
| 2/1/15 | Julie Dockery | ~~Victor Dockery~~ Kalispell, MT |
| 2/1 | Gayer M Lyck | Kila, MT |
| 2/1/15 | Linda Baldridge | Kalispell |
| 2/1/15 | Angela M Gentry | Kalispell |
| 2/1/15 | Abigail Nash | Kalispell |
| 2/1/15 | William C. Kostoskey | ~~Lakeside~~ Lakeside MT |
| 2-1-15 | Roger Wolcott | Kalispell MT |

**PETITION REQUESTING LEGISLATORS TO VOTE AGAINST THE CSKT WATER RIGHTS COMPACT**

| DATE | SIGNATURE | TOWN |
|---|---|---|
| 2/1/15 | T. Ov | Kalispell |
| 2/1/15 | | Kalispell |
| 2-1-15 | | Kila |
| 2-1-15 | Ann Channing | Marion |
| 2-1-15 | | BIG FORK |
| 2-1-15 | | Marion |
| 2-1-15 | | Marion |
| 2-1-15 | | KALISPELL |
| 21-15 | Frances Young | Lakeside |
| 2.1.15 | Brenda Landuke | Lakeside |
| 21-15 | James R. Taylor | Columbia Falls |
| 2-1-15 | Susan Clapper | Kila |
| 2-1-15 | Scott Clapper | Kila |
| 2-1-15 | | Whitefish |
| 2/1/15 | | Whitefish |

**PETITION REQUESTING LEGISLATORS TO VOTE AGAINST THE CSKT WATER RIGHTS COMPACT**

| DATE | SIGNATURE | TOWN |
|---|---|---|
| 02/11/15 | Dawn Costello<br>Jaime Castillo | St Ignatius |
| 2/16/15 | Scott Kerr | Moiese |
| 2/16/15 | Everett Jones | Moiese |
| 2/16/15 | Clayton Jones | CHARLO |
| 2/16-15 | Jeff Kelly | Charlo |
| 2-16-15 | Earl Brooks | moiese |
| 2-16-15 | Lynn D. Mason<br>Lynn D. Mason | ST. IGNATIUS |
| 2/16/15 | Joan B Mason<br>JOAN B. MASON | St. Ignatius |
| 2/16-15 | Jeffrey Todd Lulow<br>Jeffrey TODD LULOW | RONAN |
| 2/16/15 | Diane M Breuer<br>DIANE M BREUER | Dixon |
| 2-16-15 | John Moon<br>JOHN MOON | RONAN |
| 2-16-15 | Phyllis Deanna Bathgate<br>Phyllis DEANNA BATHGATE | Moiese |
| | Perry Francis | Ptarlee |
| | Carol Lyons | St. Ig |
| 2-16-15 | Laura Fricke<br>Laura Fricke | Florence |

**PETITION REQUESTING LEGISLATORS TO VOTE AGAINST THE CSKT WATER RIGHTS COMPACT**

| DATE | SIGNATURE | TOWN |
|---|---|---|
| 1/28/15 | [illegible] | upper Post Creek St. Ignatius 59865 |
| 1/28/15 | Jon Read Cell 2531130 | Ronan MT 59864 Former House Rep 15 Lake County |
| 1/28/15 | Julia Fehrs | Bigfork |
| 1/28/15 | Joe Fehrs | Bigfork |
| 1/28/2015 | Rita C Hall | Columbia Falls |
| 1/28/15 | Dave Oetz | Columbia Falls |
| 1/28/15 | Claire L Ryan | Bigfork |
| 1/28/15 | Daniel Boone Cole | DIXON |
| 1/28/15 | [illegible] | St. Ignatius |
| 1-28-15 | Sheila M.C. Vallejo | St. Ignatius |
| 1-30-15 | Robert L Starks Robert L Starks | St. Ignatius |
| 1/30/15 | Elke K. Starks | St. Ignatius |
| 2-6-015 | MARY ANN Schmitz Mary Ann Schmitz | ST. IGNATIUS |
| 2/6/15 | Norma Sirucek Norma Sirucek | St. Ignatius |
| 3/11/14 | Charles Jacques CHAS JACQUES | St Ignatius MT |

**PETITION REQUESTING LEGISLATORS TO VOTE AGAINST THE CSKT WATER RIGHTS COMPACT**

| DATE | SIGNATURE | TOWN |
|---|---|---|
| 1-26-15 | LYNN Delecaris<br>Lynn Delecaris | ST. Ignatius |
| 1-26-15 | KENNETH Buffalo wallow<br>KENNETH Killsback, Mgr. | St. Ignatius |
| 1-26-15 | Margaret Michelle Nelson<br>Margaret Michelle Nelson | St. Ignatius |
| 1-28-15 | JULIAN T. Lopez<br>Julian T. Lopez | St Ignatius |
| 1-28-15 | SHANE O'RIEN<br>Shane O'Rien | Polson |
| 1/28/15 | Pat Cable | St. Ignatius, MT |
| 1-28-15 | Wayne Blevins | Charlo, MT |
| 1-28-15 | Christopher Sullivan | Dixon, MT |
| 1-28-15 | Angela Allen | Ronan, MT |
| 1-28/15 | Ross Middlemist | Dixon, MT |
| 1-28-15 | Catherine Vanderman<br>Catherine Vanderman | Ronan, MT |
| 1/28/15 | Terry Backs<br>TERRY BACKS | St. Ignatius MT. |
| 1/28/15 | John O'Neil<br>JOHN O'NEIL | KALISPELL |
| 1/28/15 | Laura O'Neil | Kalispell, MT |
| 1/28/15 | Richard Jones | Ronan, MT |

**PETITION REQUESTING LEGISLATORS TO VOTE AGAINST THE CSKT WATER RIGHTS COMPACT**

| DATE | SIGNATURE | TOWN |
|---|---|---|
| 2/3/15 | | Kalispell |
| 2/3/15 | | Kalispell |
| 2/3/15 | | Kalispell |
| 2/3/15 | | KALISPELL |
| 2/3/15 | | Kalispell |
| 2-3-15 | | Kalispell |
| 2/3/15 | | Kalispell |
| 2/3/15 | | kalispell |
| 2/4/15 | | Kalispell |
| 2/4/15 | | Kalispell |
| 2/4/15 | | Kalispell |
| 2/4/15 | | Kila |
| 2/5/15 | | KALISPELL |
| 2/5/15 | D. Mills | Kila |
| 2/5/15 | Sandra Bousquet | Kila |

**PETITION REQUESTING LEGISLATORS TO VOTE AGAINST THE CSKT WATER RIGHTS COMPACT**

| DATE | SIGNATURE | TOWN |
|---|---|---|
| 2-3 | | Flathead |
| 2/3 | Mike Cotey | FHAI - KICA |
| 2/3 | Russ Walter | Kalispell |
| 2-3 | | KALISPELL |
| 2-3 | Ronald J. Martin | Swan Lake |
| 2-3 | | WHITEFISH |
| 2/3 | | Kila |
| 2/3 | Brian Boucher | Kila |
| 2/3 | Jane F. Gordon | Kalispell |
| 2/3 | Teresa D. Taylor | Kalispell, MT. |
| 2/3 | Wesley Wolf | Kal, MT |
| 2/3 | Rick Reed | Kalispell Mt. |
| 2/3 | | Great Falls, MT |
| 2/3 | Brad Barker | Marion |
| 2-3 | TIM KRAFT | KALISPELL, MT |

**PETITION REQUESTING LEGISLATORS TO VOTE AGAINST THE CSKT WATER RIGHTS COMPACT**

| DATE | SIGNATURE | TOWN |
|---|---|---|
| 2-2-2015 | | Kila |
| 2-2-15 | | Kalispell |
| 2-2-15 | | KILA |
| 2/2/15 | | Kal. spell |
| 2/2/15 | | Kila |
| 2/2/15 | | KILA |
| 02/02/15 | | Kila |
| 2 2/15 | | Kalispell |
| 2/2/15 | | Coeur d'Alene Dalle |
| | | Kal. |
| 2/2/15 | | Kal. |
| 2/3/15 | | KALISPELL |
| 2/3/15 | | Kalispell |
| 2-3/15 | | KILA |
| 2-3/15 | | Kalispell |

**PETITION REQUESTING LEGISLATORS TO VOTE AGAINST THE CSKT WATER RIGHTS COMPACT**

| DATE | SIGNATURE | TOWN |
|---|---|---|
| 2-2-15 | Lonnie Knutson | Kalispell |
| 2-2-15 | [illegible] | C Falls |
| 2-2-15 | [illegible] | Kila |
| 2-215 | [illegible] | Kila |
| 2-2-15 | [illegible] | Kila |
| 2-2-15 | [illegible] | KAL. |
| 2-2-15 | Tony [illegible] | C Falls |
| 2-2-15 | [illegible] | Kila |
| 2-2-15 | Lynette Erickson | Kalispell |
| 2-215 | [illegible] | RAL |
| 2-2-15 | [illegible] | Kalispell |
| 2-2-15 | [illegible] | Kila |
| 2-2-15 | [illegible] | Kilispell |
| 2/2/15 | Scott Sinick | KILA |
| 2-2-15 | Crystal [illegible] | Kila |

**PETITION REQUESTING LEGISLATORS TO VOTE AGAINST THE CSKT WATER RIGHTS COMPACT**

| DATE | SIGNATURE | TOWN |
|---|---|---|
| 2/2/15 | | Kalispell |
| 2/2/15 | | Kalispell |
| 2/2/15 | B. Rubin | KALISPELL |
| 2/2/15 | Jennifer Bautista | Kila |
| 2/2/15 | Mark Pitts | Kila |
| 2/2/15 | Amanda Pitts | Kila |
| 2/2/15 | | Kalispell |
| 2/2/15 | Tom Reed | Kila |
| 2-2-5 | | Kalispell |
| 2-2-2015 | | Kalispell |
| 2-2-15 | | KAL |
| 2-2-15 | | KAL |
| 2-2-15 | | KAL |
| 2-2-15 | Stephanie Otto-Barfoot | Kila |
| 2-2-15 | Chad Barfoot | KILA |

**PETITION REQUESTING LEGISLATORS TO VOTE AGAINST THE CSKT WATER RIGHTS COMPACT**

| DATE | SIGNATURE | TOWN |
|---|---|---|
| 1-31-15 | JaCarla Coure | Kalispell |
| 1/31/15 | Conrad Geraga | Kalispell |
| 2/1/15 | Claud Haugen | Kalispell |
| 2/1/15 | | Kalispell |
| 2/2/15 | | Kalispell |
| 2/2/15 | Brett Bennett | Kalispell |
| 2/2/15 | | Kalispell |
| 2/2/15 | David J Rusch | Kalispell |
| 2-2-15 | Conrad W. Odom | Kalispell |
| 2-2-15 | | Kalispell |
| 2-2-15 | | Kalispell |
| 2-2-15 | | Marion |
| 2-2-15 | | Kila |
| 2-2-15 | | Kila |
| 2-2-15 | Amanda Flaig | Kalispell |

**PETITION REQUESTING LEGISLATORS TO VOTE AGAINST THE CSKT WATER RIGHTS COMPACT**

| DATE | SIGNATURE | TOWN |
|---|---|---|
| 1-30-15 | Gerald Ruff | Kalispell |
| 1/30/15 | Rebecca Green | Kila |
| 1-30-15 | Mona Woodruff | Kila |
| 1-30-15 | DONALD GADAMS JR | KILA |
| 1/30/15 | Wayne Zamarripa | KILA |
| 1-30-15 | Ronald Eyer | Kila |
| 1-30-15 | Jim H Williams | Kalispell |
| 1 30 15 | Lyle Mooney | KALISPELL |
| 1-30-15 | | Kila |
| 1-30-15 | Terry Dahlke | 1270 Sherman Rd Kalispell, MT 59901 |
| 1-30-15 | | Kila |
| 1-30-15 | | Kila |
| 1/30/15 | | Kalispell |
| 1/31/15 | Bill Dewyer | Kalispell |
| 1-31-15 | Norm Masters Norm Masters | Kalispell |

**PETITION REQUESTING LEGISLATORS TO VOTE AGAINST THE CSKT WATER RIGHTS COMPACT**

| DATE | SIGNATURE | TOWN |
|---|---|---|
| 1-30-15 | | Kalispell MT |
| 1-30-15 | | Kila MT |
| 1-30-15 | | Kila MT |
| 1-30-15 | | Kalispell MT |
| 1-30-15 | | Kalispell, 59901 |
| 1-30-15 | | Kalispell, 59901 |
| 1/30/15 | | Kalispell 59901 |
| 1/30/15 | | Kalispell MT 59901 |
| 1/30/15 | | Kalispell 59901 |
| 1-30-15 | | Kila, 59920 |
| 1-30-15 | | Kila 59920 |
| 1-30-15 | | Kalispell 59901 |
| 1-30-15 | | Kalispell 59901 |
| 1-30-15 | | Whitefish 59923 |
| 1-30-15 | | KAL 59901 |

**PETITION REQUESTING LEGISLATORS TO VOTE AGAINST THE CSKT WATER RIGHTS COMPACT**

| DATE | SIGNATURE | TOWN |
|---|---|---|
| 2/15-2015 | Omae Wolf | Bigfork, mt. |
| 2-15-15 | Mayda Brendsel MAYDA BRENDSEL | Bigfork, mt |
| 2-15-15 | Linda Boehm LINDA BOEHM | BIGFORK, MT |
| 2-15 | Marty Boehm Marty Boehm | Bigfork MT |
| 2-15 | MIKE LATHAM | BIGFORK MT |
| 2/15/15 | Elton O Brendsel Elton O Brendsel | |
| 2/15/15 | April Kauffman AKauffman | Kalispell, MT |
| 2/15/15 | Jeremy Kauffman | Kalispell, MT |
| 2/15/15 | Shantel Kauffman Shantel Kauffman | Kalispell, MT |
| 2/15/15 | Betty KARGER Betty Karger | Bigfork Mt. |
| 2/15/ | ROGER KARGER Roger Karger | Bigfork MT |
| 2/15 | Janet Karger | Bigfork |
| 15/Feb/2015 | CINDY BISSELL | Bigfork mt. |
| 2/15/15 | Candace Dingey | Bigfork, MT |
| 2-15-15 | Ken Dingey | Ferndale, MT |

**PETITION REQUESTING LEGISLATORS TO VOTE AGAINST THE CSKT WATER RIGHTS COMPACT**

| DATE | SIGNATURE | TOWN |
|---|---|---|
| 2/11/15 | Kari Rieke | Bigfork, MT |
| 2/11/15 | | Kalispell, MT. |
| 2/11/15 | Sherry Stockham | Kalispell, MT |
| 2/11/15 | Linda Munson | Kalispell, MT |
| 2/11/15 | | KALISPELL, MT. |
| 2/11/15 | Otis Winters | Kalispell, MT. |
| 2-11-15 | Jay Seal | Kalispell, MT |
| 2/13/15 | Evelyn Sept | Kalispell, MT |
| 2/13/15 | Elizabeth Jredenberg | Kalispell MT |
| 2/13/15 | | Kalispell MT. |
| 2-13-15 | Leona Tilton | Columbia Montana |
| 2-14-15 | Annie Tilton | Kalispell, Montana |
| 2-15-15 | Donavan S. Ottosen | Bigfork, Montana |
| 2-15-15 | | Big Fork, Montana |
| 2/15/15 | David Mc | Bigfork, MT |

**PETITION REQUESTING LEGISLATORS TO VOTE AGAINST THE CSKT WATER RIGHTS COMPACT**

| DATE | SIGNATURE | TOWN |
|---|---|---|
| | James Kirby | Bigfork |
| | Connie Kirby | Bigfork |
| | Georgia Parsons | Kalispell |
| | | Kalispell |
| | | Kalispell |
| | | Bigfork |
| | Michael Shepard | Col Falls |
| | | BIGFORK |
| | | Kalispell |
| | Doug Wise | Whitefish |
| | W. Turner Askew | Whitefish |
| | | Kalispell |
| | | Bigfork |
| | Annette Seres | Bigfork |
| | Clarice Ryan | Bigfork |

**PETITION REQUESTING LEGISLATORS TO VOTE AGAINST THE CSKT WATER RIGHTS COMPACT**

| DATE | SIGNATURE | TOWN |
|---|---|---|
| 2/10/15 | Davida Constans | Kalispell |
| 2/10/15 | Janet E Walters | Lakeside |
| 2/10/15 | [illegible] Valley | Big Fork R/C. |
| 2/10/15 | Marian A Valley | Bigfork |
| 2/10/15 | Suzi Flogen | Kalispell |
| 2/10/15 | [illegible] | Kalispell |
| 2/10/15 | Ray M Long | Bigfork |
| 2/10/15 | [illegible] | Whitefish |
| 2/10/15 | Tom [illegible] | Kalispell |
| 2/10/15 | Carl Bruce | Kalispell |
| 2/10/15 | [illegible] | Kalispell |
| 2/10/15 | S. Lavonne Lam | Kalispell |
| 2/10/15 | Harry Solomon | Bigfork, MT |
| 2-12-15 | David A Sons | Lakeside MT |
| 2-12-15 | Gordon Parsons | KALISPELL, MT |

**PETITION REQUESTING LEGISLATORS TO VOTE AGAINST THE CSKT WATER RIGHTS COMPACT**

| DATE | SIGNATURE | TOWN |
|---|---|---|
| 1/30 | Madonna Hansen | Kalispell |
| 2/1 | [illegible] | KALISPELL |
| 2/1/15 | [illegible] | Kalispell |
| 2-1-15 | Carol Ann Welch | Kalispell |
| 2-1-15 | [illegible] | Kalispell |
| 2-1-15 | AC Lane "Betty" | Kalispell |
| 2/1/15 | Samuel J. Stockham | 101 WINCHESTER ST KALISPELL, MT 59901 |
| 2/1/15 | [illegible] | PO Box 10942 Kalispell, MT. 59904 |
| 2/1/15 | Connie Baldwin | Kalispell, Mt 59901 |
| 2/1/15 | Emily Baker | Kalispell, MT 59901 |
| 2/1/15 | [illegible] | Kalispell, Mt. 59901 |
| 2/1/15 | [illegible] | Kalispell, MT 59901 |
| 2/1/15 | [illegible] | Kila MT 59920 |
| 2/1/15 | [illegible] | Columbia Falls 59912 |
| 2/1/15 | [illegible] | Columbia Falls 59912 |

**PETITION REQUESTING LEGISLATORS TO VOTE AGAINST THE CSKT WATER RIGHTS COMPACT**

| DATE | SIGNATURE | TOWN |
|---|---|---|
| 2-1-15 | Carolyn Palmquist | Polson |
| 2-1-15 | Janis Ann | Kalispell |
| 2-1-15 | Diana Taylor | Kalispell |
| 2-1-15 | John Secrist | Bigfork |
| 2/1/15 | Richard D. DeLapp | Kalispell |
| 2-1-15 | Michelle Shaffer | Kalispell |
| 2-1-15 | [illegible] | [illegible] |
| 2/1/15 | Nancy O'Brien | Whitefish |
| 2/1/15 | [illegible] | Kalispell |
| 2/1/15 | Jeff Ball | Kalispell |
| 2/1/2015 | Lynn Hudson | Kalispell |
| 2-1-15 | David Lambert | Kalispell |
| 2-1-15 | Mark Palmquist | Big Arm MT |
| 2/1/15 | Sam Stockham | KALISPELL |
| 2-1-15 | John Emberson | Kalispell, MT |

**PETITION REQUESTING LEGISLATORS TO VOTE AGAINST THE CSKT WATER RIGHTS COMPACT**

| DATE | SIGNATURE | TOWN |
|---|---|---|
| 2-16-15 | Mary E. Weber<br>Mary E. Weber | Stevensville. |
| 2-16-15 | MARILYN R. HATCH<br>Marilyn R. Hatch | LOLO |
| 2/16/15 | Jeanette M. Zentgraf<br>Jeanette M Zentgraf | Lolo |
| 2/16/15 | | St. Ignatius |
| 2/16/15 | | Ronan |
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## PETITION REQUESTING LEGISLATORS TO VOTE AGAINST THE CSKT WATER RIGHTS COMPACT

**WHEREAS,** the negotiating parties for the CSKT Reserved Water Rights Compact concede western Montana water rights to Federal and Tribal governments with complete disregard of historical acts by the Federal Government to "open" the reservation to homesteading,

**WHEREAS,** the proposed compact will give the CSKT legal title to all the water in the Flathead Irrigation Project (FIP) although 90% of the lands under the project are not tribally owned, and water deliveries to irrigators will be reduced by as much as 70%,

**WHEREAS**, the compact documents have far reaching environmental and economic implications that have been largely ignored by the state,

**WHEREAS**, the Unitary Management Ordinance also known as the "Grand Bargain", is designed to unconstitutionally remove all citizens within the exterior boundaries of the Flathead Reservation from under state jurisdiction concerning our water rights,

**WHEREAS**, the off reservation water claims in this compact are out of the scope of the compact commission and are not Federal Reserved Water Rights,

**WHEREAS,** I adamantly do not agree with, oppose and will oppose in any way possible any government or legislative action that will result in the United States in trust for the CSKT, or the CSKT owning or controlling any aspect of the property rights of others up to and including the fee title and associated water rights.

**THEREFORE**, I (we) demand our legislature:

1. To vote against the approval of the CSKT Water Compact brought before the legislature in this current session
2. To allow the compact commission to sunset and move the tribal federal reserved water right decisions into the Montana General Stream Adjudication Process.
3. To take the necessary steps to reaffirm the rights of Montanans to control the natural resource of water within the boundaries of the State of Montana as is guaranteed by our state Constitution.

| DATE | SIGNATURE | TOWN |
|---|---|---|
| 2-15-15 | Marjorie M Shuler | Polson MT 59860 |
| 2-15-15 | Margaret M. Clay | Polson MT 59860 |
| 2-15-15 | James M Cohen | Polson, MT 59860 |
| 2/15/15 | Barbara Gabbert | Polson, MT 59860 |

## PETITION REQUESTING LEGISLATORS TO VOTE AGAINST THE CSKT WATER RIGHTS COMPACT

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| DATE | SIGNATURE | TOWN |
|---|---|---|
| 1-30-15 | Toby Young | Kila MT |
| 1/30/15 | Nancy Riley | Kila, MT |
| 1/30/15 | Joe Klempel | Kalispell, MT. |
| 1/30/15 | | Kalispell, MT. |

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3. To take the necessary steps to reaffirm the rights of Montanans to control the natural resource of water within the boundaries of the State of Montana as is guaranteed by our state Constitution.

| DATE | SIGNATURE | TOWN |
|---|---|---|
| 2/9/15 | Lois Krause | Bigfork, Mt. |
| 2-9-15 | Robert Krause | Bigfork, Mont. |
| 2/10/15 | Donald A Brill | Bigfork, MT. |
| 2/11/15 | Sharon Herron | Kalispell, MT |

## PETITION REQUESTING LEGISLATORS TO VOTE AGAINST THE CSKT WATER RIGHTS COMPACT

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3. To take the necessary steps to reaffirm the rights of Montanans to control the natural resource of water within the boundaries of the State of Montana as is guaranteed by our state Constitution.

| DATE | SIGNATURE | TOWN |
|---|---|---|
| 1/26/15 | David Passier<br>DAVID PASSIER. | St Ignatius |
| 1-26-15 | Ray Jensen<br>Ray Jensen | St Ignatius |
| 1-26-15 | Adam Hertz<br>Adam Hertz | Charlo |
| 1-26-15 | Trudy Samuelson<br>Trudy Samuelson | St. Ignatius |

**PETITION REQUESTING LEGISLATORS TO VOTE AGAINST THE CSKT WATER RIGHTS COMPACT**

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| DATE | SIGNATURE | TOWN |
|---|---|---|
| 2/07/15 | [signature] | KALISPELL |
| 2-7-15 | Sadie Thompson | Kalispell |
| 2-7-15 | Twinda K. Hardy | Columbia Falls |
| 2-10-15 | [signature] | Big Fork |

**PETITION REQUESTING LEGISLATORS TO VOTE AGAINST THE CSKT WATER RIGHTS COMPACT**

| DATE | SIGNATURE | TOWN |
|---|---|---|
| 2-14-15 | [signature] | Kalispell |
| 2-14-15 | [signature] | Big Fork |
| 2-14-15 | [signature] | Big Fork |
| 2-14-15 | [signature] | Big Fork |
| 2-15-15 | [signature] | Big Fork |
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**PETITION REQUESTING LEGISLATORS TO VOTE AGAINST THE CSKT WATER RIGHTS COMPACT**

| DATE | SIGNATURE | TOWN |
|---|---|---|
| 2/14/15 | Lowania Peckavance | Bigfork |
| 2-14-15 | | Bigfork |
| 2-14-15 | Dori Davis | Bigfork |
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Additional Documents
SENATE: Judiciary
Date: 2/16/15
Bill No. SB262



Senate Judiciary Committee
16 February 2015

Mr. Chairman, members of the committee, my name is Robert Starks.

I am self-employed, an irrigator, a veteran of both the United States Marines and the United States Army and a former law enforcement officer.

My family and I stand in opposition to Senate Bill-262.

You, our elected representatives, now find yourselves at a crossroad – one path allows you to protect and defend our rights as citizens and residents of Montana and the other does not. There is no middle ground with this Senate Bill.

Some of our legislators have stated that they have not read the Water Rights Compact this Senate Bill represents–the Western Watershed of Montana–and yet they believe they can honestly represent our interests on this issue? We should find them trustworthy, faithful and loyal to our best interests?

The Compact before you is a subversive document that will, if allowed to stand, cause more harm to the entire western one-third of this state, beyond anything anyone sitting here today can imagine.

I beg you to vote NO, do not allow it to see the light of day. This abysmal document must die right here, right now.

Following the Rule of Law should be your foremost measure and it should lead you to the same conclusion; NO. The compact has gone too far astray from any established law. It is not a quantification of water rights, it is a theft of them–from us by the federal government, in trust for the tribes.

Thank you,

Robert Starks
Citizen and Irrigator
St. Ignatius, MT.

GLORIA H. ROARK
10079 Miller Creek Road
Missoula, Mt. 59803
(406)251-5961

This Water Compact is a clear violation of private property rights as guaranteed under the U. S. Constitution, and further violates Article IX Section 3 of the Montana Constitution. If this Compact is passed, it will not only disenfranchise all the residents of Montana, but will have a ripple effect across our great Nation, as more and more federal overreaching, through your encouragement, will occur.

We cannot continue to disregard the Constitution and expect to keep our Republic. I think it is very timely that this Hearing is being held on Presidents Day. I am sure that our founding fathers are "rolling over in their graves to see that we are willingly throwing away our Freedom." They pledged their lives, their fortunes, and Sacred Honor for us. Further, the schism that has been created between the Native Americans and the people of Montana will probably never be repaired, and is unconscionable.

Another facet to this Compact is that it is so complex and confusing, and deliberately designed as such. A major problem that we have in our society, are lawyers, and lawyers have created this dilemma To quote an Essay, called" The Lawyers Party," by Bruce Walker, "Confined to the narrow practice of law, that is fine. But it is an awful way to govern a great nation." I would like to add to that sentence, it's an awful way to govern our great state of Montana. Walker further states, "When politicians as lawyers begin to view some Americans as clients and other Americans as opposing parties, then the role of the legal system in life becomes all consuming. Some Americans become "adverse parties of our very government. We are citizens of a Republic, which promises us a great deal of freedom from laws, from courts, and from lawyers."

This Federal Water Compact clearly shows favoritism towards a specific group of people, The Confederated Salish & Kootenai Tribes, while disregarding the rights and privileges of all the residents of Montana. We are "one Nation under God" and entitled to "equal protection of the law."

As I have stated previously, we cannot have a **NATION WITHIN A NATION.** To honor one's heritage is a noble thing, and everybody should be proud of their heritage. However, what joy is there in hurting other people for your own profit?

The taxpayers of Montana and all the taxpayers of the U. S. can no longer support this kind of sabotage by our own Governments, specifically the $55 Million dollar tax costs, or the $1.2 Billion Dollars in Federal Tax Payers costs.

## I urge you to OPPOSE THE WATER COMPACT BY VOTING NO.

29 Meadowlark Drive
Kalispell, MT 59901
February 16, 2015

TO: The Senate Judiciary Committee
Sales, Scott (R) – Ch
Fielder, Jennifer (R) – VCh
Sands, Diane (D) – MVCh
Driscoll, Robyn (D)
Hansen, Kristin (R)
Hinkle, Jedediah (R)
Kary, Doug (R)
Larsen, Cliff (D)
McNally, Mary (D)
Moe, Mary Sheehy (D)
Sands, Diane (D)
Swandal, Nels (R)
Vincent, Chas (R)

I respectfully request that you staunchly OPPOSE Senate Bill 262 for these reasons:

~It is stealing from the citizens of Montana.
~It will destroy the livelihood of many of the citizens.
~It is insane to put the control of all the waters in western Montana into the hands of group of people who claim to be a separate, sovereign nation.
~Your oath of office and the Montana Constitution require you to PROTECT the *citizens of Montana.*
~Without water rights, property values will be destroyed.

I recognize the ultimate goal of those behind this scheme is to remove all people from the corridor stretching from the Yukon to the Yucatan, as outlined in Agenda 21 (contrived by the United Nations), but this is an evil plan that I believe most of you do not want to be party to.

Two Websites to consider:

http://www.democratsagainstunagenda21.com/
http://www.thenewamerican.com/usnews/politics/item/12675-gop-platform-rejects-un-agenda-21-as-threat-to-sovereignty

Thank you.

Sincerely,

Dorothy C. Huff (Mrs.)
(406) 752-4712
rldjht@centurytel.net

**No man escapes when freedom fails,**
**The best men rot in filthy jails,**
**And those who cried, "Appease! Appease!"**
**Are hanged by those they tried to please.**
**—Hiram Mann**

Hiram Mann, a New York City attorney who died at age 83 in 1955, had these lines published in the *Wall Street Journal* in 1947.

Additional Documents
SENATE: Judiciary
Date: 2/16/15
Bill No. SB262

**RICHARD A. SIMMS**
ATTORNEY AT LAW

NEW MEXICO BOARD CERTIFIED
Specialist in Water Law
Nov. 16, 1991 - Nov. 27, 2012
Licensed in New Mexico

February 11, 2015

PHOENIX OFFICE
221 North Ironwood St.
Gilbert, AZ 85234-5794
TELEPHONE: (480) 306-5661

SANTA FE OFFICE
217 Camino Encantado
Santa Fe, New Mexico 87501
TELEPHONE: (505) 699-8599
richard.simms@aol.com

Senator Debbie Barrett, President of the Senate
Representative Austin Knudsen, Speaker of the House
All Legislators

Ladies and gentlemen:

In the my letter to you of January 8, 2015, I stated initially that "[i]n reaching agreement on the terms of the proposed Compact, the Tribes and the Montana Reserved Water Rights Compact Commission have agreed to transform federal reserved water rights under *Winters v. United States*, 207 U.S. 564 (1908), into Indian reserved water rights, greatly expanding the nature and scope of the permissible claims that Indian tribes can make under the Winters Doctrine." In a response to my letter prepared by counsel for the Reserved Water Rights Compact Commission dated February 2, 2015, it is asserted that the agreement does not "reflect a position agreed to by the parties in the Compact, nor [is it an accurate] represent[ation of] the underlying premise of the Compact. Counsel also asserted that my statement that the Compact Commission has adopted the "legal proposition that the Tribes reserved their own Reservation with a 'time immemorial water rights priority' . . . is also incorrect." The first statement in Article I of the Compact, however, reads: "WHEREAS, pursuant to the Hellgate Treaty of 1855, 12 Stat. 975, the Confederated Salish and Kootenai Tribes reserved the Flathead Indian Reservation." The very first predicate of the Compact, like all of the provisions of the Compact, is recited by the Tribes, the State of Montana, and the United States, in concert.[1]

The innocent thesis of the Compact Commission's response to my initial letter is that the provisions of the Compact, including all of the instream flows, were designed "to protect existing uses." To the contrary, the basic mechanism in the Compact for generating reserved rights is the use of an inappropriate computer model to hypothetically idealize the management, operation, and efficiency of the

[1] The Compact Commission, attached to the Governor's Office, negotiated the Compact on behalf of the State of Montana.

Flathead Irrigation Project in order to convert the "water saved" into 102 instream flows that portray the Reservation in its uncorrupted state. The core provisions designed to effectuate the ongoing conversion of irrigation water into instream flows run through the length of the Compact. Some of these provisions deprive the State of Montana of its constitutional and statutory authority to administer water within the Reservation. Others eliminate certain legislative and judicial prerogatives within the Reservation. And others, contained in the Abstracts, which are buried in the Appendices to the Compact and form a substantive part of the Compact, give such an enormous amount of the State of Montana's water to the Tribes that, instead of being based on a *Winters* doctrine analysis, the gift can only derive from the proposition that the Tribes own all of the water on, under, or near the Reservation.

The core provisions designed to effectuate the ongoing conversion of irrigation water to instream flows include:

- Article I, First and Eighteenth Recitals; Article II, Subsections 2, 5, 20, 23, 28, 30, 31, 32, 38, 44, 45, 50, 51, 52, 56, 57, 58, 67, 71;
- Article III, Subsections A, C (pp.14-21), E; Article IV, Subsections D, F; Article V, Subsections B, C; and Article VI, Subsections A, B.

The provisions that deprive the State of Montana of its constitutional and statutory obligations to administer water within the Reservation include:

- Article II, Subsection 45, "Law of Administration," Appendix 4, Article IV (Implementation of Compact) (the creation of a unitary management ordinance governing the administration, development, and enforcement of a new and distinct body of water law over all water rights within the Reservation, whether based on Tribal, federal, or state law);
- Article VI, I (1, 2, 4, 5, 6) (the creation of a politically appointed water management board dominated by Tribal interests to implement the unitary management ordinance).

The provisions that eliminate certain legislative and judicial prerogatives include:

- Article III C (1) (a-l), D (1-8) (preventing the state district court and the Water Court from adjudicating valid state-based water rights within the Reservation);

- Article III C (k), D (4, 5, 6), (co-ownership of state-based instream flow rights off-Reservation which could previously be transferred to other uses if required by judicial and legislative prerogative);
- Article IV B (5,6), Article IV, generally (exempting the Tribes from compliance with MCA 85-2-402 regarding changes of use, large volume water transfers, and out-of-state transfers);
- Article III D 5 (c) (requiring consultation with "stakeholders" in off-Reservation watersheds regarding the reductions in state-based water uses to accommodate Tribal off-Reservation instream flows).

And the provisions giving such an enormous amount of the State of Montana's water to the Tribes that the gift can only derive from the proposition that the Tribes own all of the water on, under, or near the Reservation include:

- Appendix 9, Appendix 10 (awarding 100% of the water in Flathead Lake (prior to the construction of Kerr Dam), both on and off the Reservation, with a time immemorial priority);
- Article V (1), (retaining the right of the Tribes to secure all the state-based water rights currently impounded by Kerr Dam);
- Article III C 1 (a, c, e), Appendices 5, 9, 11, 12-13 (awarding 100% of the water in the Flathead Irrigation Project with a time immemorial priority, while 90% of the water delivered to the farms and ranches is appurtenant to lands owned by non-Indians);
- Article II, Subsections 2, 5, 20, 23, 28, 30, 31, 32, 38, 44, 45, 50, 51, 52, 56, 57, 58, 67, 71 (definitions that effectuate the allocation of irrigation water to instream flows);
- Appendices 18, 25-27, Article III C (7, 8) (awarding 40%-65% of available river flow in eight off-Reservation rivers dedicated to instream flows); and
- Appendix 17 (awarding all of the off-Reservation lakes in the adjacent mountain ranges).[2]

[2] The Compact Commission's counsel also responded to the 70% reduction in historic use detailed in my letter. Review of historical data made available to the Montana Land and Water Alliance, Inc. subsequent to my letter, confirms that the reduction in historic use is still a valid and reasonable estimate. The additional water supplied at the river diversion, which was not contemplated even after the Technical Work Group's findings during the summer of 2014 that the Tribes' model was inappropriate to determine farm turn out allowances, results in a maximum delivery of 1.4 acre feet per acre at the farm turnouts, which still represents a 70% reduction in historic use in a *wet year*. Moreover, the Compact proposes to expand irrigated acreage by some 5,000 acres, but still proposes to supply the same amount of water for irrigation, resulting in even less on-farm water delivery.

Finally, I want to explain a major legal problem with the argument that the Supreme Court held that the Indians involved in *Winters v. United States*, 207 U.S. 564 (1908), reserved their Reservation as opposed to the United States.

The specific, bedrock issue in *Winters* was whether the United States had impliedly reserved water from appropriation under Montana's Territorial law of prior appropriation when, through the Agreement of May 1, 1888, the United States explicitly withdrew from the public domain the land that became the Ft. Belknap Reservation.[3] Generally, the *Winters* doctrine has been repeatedly articulated by the Supreme Court this way: "When the federal government withdraws its land from the public domain, the Government, by implication, reserves appurtenant water then unappropriated to the extent needed to accomplish the purpose of the reservation." *Cappaert v. United States*, 426 U.S. 128, 141 (1976). Another way to appreciate the basic issue in *Winters* is to ask whether there would be any legal consequences if the Indians reserved the Fort Belknap Reservation instead of the United States. One consequence would have been that the Supreme Court could not have made federal reserved water rights equally applicable to non-Indian reservations of land from the public domain, as the Court did in *Arizona v. California*, 373 U.S. 546 (1963).

In *Arizona v. California*, the Supreme Court itself answered the question of who did the reserving in *Winters*:

> The Court in *Winters*, concluded that the Government, when it created the [Fort Belknap] Indian Reservation, intended to deal fairly with the Indians by reserving for them the waters without which their lands would have been useless. *Winters* has been followed by the Court as recently as 1939 in *United States v. Powers*, 305 U.S. 527. We follow it now and agree that the United States did reserve the water rights for the Indians effective as of the time the Reservation was created.

*Ibid.* at 600. The Court also agreed with the Special Master's recommendation that the *Winters* doctrine should be extended to reservations of land from the public domain for non-Indian reservations:

> The Master ruled that the principle underlying the reservation of water rights for Indian Reservations was equally applicable to other federal

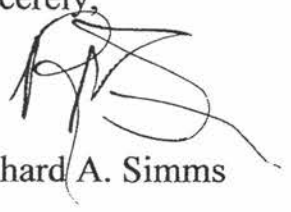
[3] Note the Court's statement at the beginning of the decision on the merits that "[t]his case, as we view it, turns on the agreement of May [1], 1888, resulting in the creation of the Fort Belknap Reservation," an Agreement set forth in the Act of May 1, 1988, 25 Stat. 113." Id., at 575.

> establishments such as National Recreation Areas and National Forests. We agree with the conclusions of the Master that the United States intended to reserve water sufficient for the future requirements of the Lake Mead National Recreation Area, the Havasu Lake National Wildlife Refuge, the Imperial National Wildlife Refuge, and the Gila National Forest.[4]

*Id.* at 601.

The "principle underlying the reservation of water rights for Indian Reservations" in both *Winters* and *Arizona v. California* was when the United States reserved land from the public domain to create the Fort Belknap Indian Reservation, it impliedly withdrew sufficient water to satisfy the purposes for which the land was withdrawn. If, on the other hand, the Indians reserved their own Reservation, whatever the other underlying principle might have been, the *Winters* doctrine could not have been extended by the Court in *Arizona v. California* to non-Indian reservations of land from the public domain for special purposes, and the Compact Commission, along with all of the western states, would have to reopen countless adjudication cases and negotiated settlements to accommodate this new and expansive view of the *Winters* Doctrine.

Sincerely,



Richard A. Simms

Cc: Attorney General Tim Fox

[4] The Gila National Forest was the forest involved in *United States v. New Mexico*, 438 U.S. 696 (1978) (the "careful examination" of the purposes for which a reservation was made "is required because the reservation is implied, rather than expressed" and each time the Court has reviewed federal reserved water rights, it has "repeatedly emphasized that Congress reserved "only the amount necessary to fulfill the purpose of the reservation, no more").

Additional Documents
SENATE: Judiciary
Date: 2/16/15
Bill No. SB 262

February 16, 2015

RE: Water Compact

I live in Kalispell, Montana. For the past three years, I have been following the process of The water compact, and have attended more than a few of the public meetings on the compact. I now tell you that I have more than a few doubts as to whether the compact is constitutional, both at the state and federal levels, and whether it complies with existing laws at both the state and federal level.

At one meeting, a proponent of the compact warned there was BIG MONEY behind the compact, and fighting it would be a mistake. This sounds like the old saying that power and money will get what they want, whether it's legal or not and whether it's constitutional or not.

To reveal some of the doubt behind the money and power play, I submit that fishing rights was in no way ever intended to equate into water rights. At least not until the recent "new" interpretation of the Hellgate treaty.

Another problem is that proponents point out that the amount of water must be studied after passing the compact in order to make final determinations on the final amounts to be released to all "qualifying" farmers and off-reservation citizens. This sounds exactly like the health care bill that was passed, with certain congressional leaders saying they had to pass the health care act in order to see that it actually said. On the water compact, I do not believe that we should pass the compact in order to see how much water is actually going to be released or how many water rights will be allowed to retain any integrity. I certainly do not believe it when I am being told that if I like my water rights, I will be able to keep them (referring to the smaller water rights). I believe this to be an outright lie, just as the phrase "If you like your health plan, you can keep your health plan" was a lie.

If many of the water rights are not going to be affected, then why has the legislature been told, just recently, that we cannot amend the compact to codify which water rights will be unaffected, and that the water compact must be accepted as is. If this action alone does not make one fear that the water compact is little more than a huge land and water grab, then nothing does.

The Farmers and Ranchers pact has been running ads for the compact, but this group has few, if any farmers and ranchers actually supporting the compact. It appears that this pact is a false flag organization; little more than another slick political strategy. Also, the tribes involved have threatened all sorts of lawsuits if the compact is not passed. If the compact is constitutional, legal, and fair why would anyone need to threaten law suits to help get the compact passed?

There are many, many more concerns that make me believe that this compact is just another power grab by the federal government. If passed, and we discover what many of us currently know, we will have great difficulty reversing it. But, if necessary, we will reverse it.

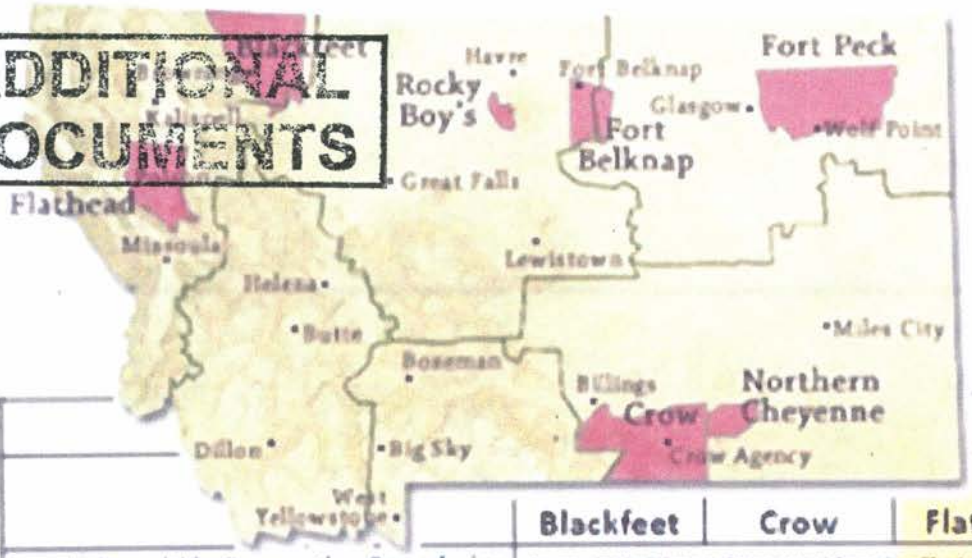
I have attached just some of the research that says this compact is not right. I am sure that others will submit much more research than I am submitting.

Thank your for your time and attention.

Sincerely,

Russ Miller
Precinct 50
Kalispell, MT

ADDITIONAL DOCUMENTS




# COMPARISON OF MONTANA INDIAN RESERVATION RESERVED WATER RIGHTS COMPACTS

| | RESERVATION | | | | | | |
|---|---|---|---|---|---|---|---|
| | Blackfeet | Crow | Flathead | Fort Belknap | Fort Peck | Northern Cheyenne | Rocky Boy |
| **Population within Reservation Boundaries** | Source: 2010 US Census of Housing and Population CPH-1-28 | | | | | | |
| Tribal | 8,944 | 5,322 | 7,042 | 2,704 | 6,714 | 4,406 | 3,221 |
| Non-Tribal | 1,461 | 1,541 | 21,317 | 147 | 3,294 | 383 | 102 |
| **Total Population** | **10,405** | **6,863** | **28,359** | **2,851** | **10,008** | **4,789** | **3,323** |
| **Land w/in Reservation Boundaries (Acres)** | Source: Indian Education for All—MT Office of Public Instruction 2009 | | | | | | |
| Tribal Trust | 311,175 | 404,172 | 653,214 | 210,954 | 413,020 | 326,547 | 122,259 |
| Tribal Allotments | 701,816 | 1,166,406 | 58,729 | 406,533 | 516,092 | 113,277 | 0 |
| Other (State/Federal/Private) | 512,721 | 894,336 | 531,057 | 28,089 | 1,164,012 | 4,951 | 0 |
| **Total Land** | **1,525,712** | **2,464,914** | **1,243,000** | **645,576** | **2,093,124** | **444,775** | **122,259** |
| **Reserved Water Right Award (Acre Feet)** | (1) | (1) | (2) | (1) | (1) | (1) | (1) |
| On Reservation | 86,880 | 800,000 | 16,300,951 | 500,000 | 1,052,472 | 89,530 | 20,000 |
| Off Reservation | 0 | 0 | 31,774,647 | 0 | 0 | 0 | 0 |
| **Total** | **86,880** | **800,000** | **48,075,598** | **500,000** | **1,052,472** | **89,530** | **20,000** |
| **Compact Details** | | | | | | | |
| On Reservation Water Rights Administration | U S /MT/Tribe | U S /MT/Tribe | Tribe/UMO | U S /MT/Tribe | U S /MT/Tribe | U S /MT/Tribe | U S /MT/Tribe |
| Off Reservation Aboriginal Treaty Rights | No | No | Yes | No | No | No | No |
| Relinquish Irrigation Water Rights to Tribe | No | No | Yes | No | No | No | No |
| Ratified Montana Legislature / U S Senate | 2009 / No | 1999 / 2010 | No / No | 2001 / No | 1985 / 1994 | 1991 / 1992 | 1997 / 1999 |
| **Statistics:** | | | | | | | |
| Acre Feet / Tribally Owned Acre | 0 09 | 0 51 | 67 53 | 0 81 | 1 13 | 0 20 | 0 16 |
| Acre Feet / Tribal Member | 9 71 | 150 32 | 6,826 98 | 184 91 | 156 76 | 20 32 | 6 21 |

(1) Negotiating Tribal Water Rights Fulfilling Promises In The And West, By Bonnie G. Colby, John E. Thorson, Sarah Britton

(2) Flathead Reservation based upon Concerned Citizens of Western Montana Analysis Note the compact commission has refused to provide these numbers

The most telling comparison chart is the following:

## COMPARISON OF MONTANA INDIAN RESERVATION RESERVED WATER RIGHTS COMPACTS

| | RESERVATION | | | | | | |
|---|---|---|---|---|---|---|---|
| | Blackfeet | Crow | Flathead | Fort Belknap | Fort Peck | Northern Cheyenne | Rocky Boy |
| Population within Reservation Boundaries | | | | | | | |
| Tribal | 8,944 | 5,322 | 7,042 | 2,704 | 6,714 | 4,406 | 3,221 |
| Non-Tribal | 1,461 | 1,541 | 21,317 | 147 | 3,294 | 383 | 102 |
| Total Population | 10,405 | 6,863 | 28,359 | 2,851 | 10,008 | 4,789 | 3,323 |
| Land w/in Reservation Boundaries (Acres) | | | | | | | |
| Tribal Trust | 311,175 | 404,172 | 653,214 | 210,954 | 413,020 | 326,547 | 122,259 |
| Tribal Allotments | 701,816 | 1,166,406 | 58,729 | 406,533 | 516,092 | 113,277 | 0 |
| Other (State/Federal/Private) | 512,721 | 894,336 | 531,057 | 28,089 | 1,164,012 | 4,951 | 0 |
| Total Land | 1,525,712 | 2,464,914 | 1,243,000 | 645,576 | 2,093,124 | 444,775 | 122,259 |
| Reserved Water Right Award (Acre Feet) | (1) | (1) | (2) | (1) | (1) | (1) | (1) |
| On Reservation | 86,880 | 800,000 | 16,300,951 | 500,000 | 1,052,472 | 89,530 | 20,000 |
| Off Reservation | 0 | 0 | 31,774,647 | 0 | 0 | 0 | 0 |
| Total | 86,880 | 800,000 | 48,075,598 | 500,000 | 1,052,472 | 89,530 | 20,000 |
| Compact Details | | | | | | | |
| On Reservation Water Rights Administration | U.S./MT/Tribe | U.S./MT/Tribe | Tribe/UMO | U.S./MT/Tribe | U.S./MT/Tribe | U.S./MT/Tribe | U.S./MT/Tribe |
| Off Reservation Aboriginal Treaty Rights | No | No | Yes | No | No | No | No |
| Relinquish Irrigation Water Rights to Tribe | No | No | Yes | No | No | No | No |
| Ratified Montana Legislature / U.S. Senate | 2009 / No | 1999 / 2010 | No / No | 2001 / No | 1985 / 1994 | 1991 / 1992 | 1997 / 1999 |
| Statistics: | | | | | | | |
| Acre Feet / Tribally Owned Acre | 0.09 | 0.51 | 67.53 | 0.81 | 1.13 | 0.20 | 0.16 |
| Acre Feet / Tribal Member | 9.71 | 150.32 | 6,826.98 | 184.91 | 156.76 | 20.32 | 6.21 |

(1) Negotiating Tribal Water Rights: Fulfilling Promises in The Arid West, By Bonnie G. Colby, John E. Thorson, Sarah Britton
(2) Flathead Reservation based upon Concerned Citizens of Western Montana Analysis. Note: the compact commission has refused to provide these numbers.

A comparison with the other six compacts demonstrates the significance of adding off-reservation water rights. The average acre feet per tribal member for the other six compacts is 88 acre feet of water. For the CSKT, the average acre feet per tribal member is 6,827 acre feet of water which is 77 times more water than the average for the other six reservations tribal members. Under the compact as proposed it is estimated that CSKT will control 147 times more water per tribally owned acre of land than the average of all other Montana tribal owned acres of land.

## The 10,000 CSKT Claims Hoax—Fear Mongering in Montana

By: Catherine Vandemoer, Ph.D.

Residents and legislators in eastern Montana have been threatened by the Compact Commission, compact proponents, the Governor and Attorney General, and the CSKT that if the CSKT Compact doesn't pass in 2015, the Tribes are going to file "10,000 claims across all of Montana". This has been an effective scare tactic used to frighten and divide Montanans into accepting a flawed, unlawful, and unconstitutional compact. The purpose of this article is to put this hoax/threat/scare tactic to rest, and to remind people that if

the CSKT Compact was so "good for Montana", these scare tactics would not have to be used as a reason to vote for it.

- What is the Origin of Off-Reservation Claims?

The compacting process underway for every Tribe and federal land holding in Montana is designed to determine the FEDERAL RESERVED WATER RIGHTS belonging to, and attached to federal reservations of land, including Indian reservations. By definition, federal reserved water rights are limited strictly to the land so reserved, and consist of the amount of water necessary to fulfill the purposes of the reservation. Every Tribal compact in Montana, except the proposed CSKT Compact, identifies a purpose of the Indian reservation, and determines an amount of water required to fulfill the purpose of the reservation. No other Tribe has claimed or threatened to seek off reservation water rights.

The CSKT claim that because Article III of the Treaty of Hellgate secures a right to take fish…in common with the citizens of the territory in their aboriginal territory—which is west of the continental divide and does not include any portion of eastern Montana—they have a "water right for instream flow" off reservation. Since when does a right to take fish mean a water right? The language of Article III in the Treaty of Hellgate is the same language as 9 other Tribes in Washington, Oregon, and Idaho, all negotiated by Governor Isaac Stevens, and the treaties of these Tribes are therefore called "Stevens treaty tribes".

What the Compact Commission is attempting to do in the CSKT Compact is to create a new type of water right from language that guarantees access to fishing sites. The Compact Commission and the CSKT are skating on thin legal and precedential ice. Indeed, a law review article written in 2006 by John Carter, the Tribes own lawyer, states that this new type of water right is unrecognized by the federal reserved rights doctrine (Winters), the McCarran Amendment, and the Montana Constitution. So the Tribes and the Compact Commission collaborated to set precedent by creating this new water right out of thin air.

Using the excuse that the Tribes access to fish in common with the citizens of the state is a water right, the Compact Commission transfers water belonging to the State of Montana and its citizens over to the federal government to be held in trust for the CSKT. This is unprecedented and an unlawful taking of water belonging to the State of Montana.

- The Difference between Aboriginal and Subsistence Territory

The CSKT aboriginal territory---those lands whose title, interest, rights and claims were ceded to the United States in exchange for $21 million in cash and a reservation—lies west of the Continental divide. The CSKT were granted access to their usual and accustomed places on those lands, in common with the citizens of the territory (state citizens) to take fish and engage in the privilege of hunting. The right to "take fish" is not a water right.

But now the Compact Commission starts waving around the map of the CSKT "subsistence range", which shows that the CSKT, like all other Tribes in Montana, roamed all over Montana to hunt and fish as part of a nomadic lifestyle. The CSKT subsistence area was not included in the Treaty of Hellgate. But the Compact Commission and the Tribes say, with a straight face, that the Tribes will file 10,000 claims to water in their subsistence area—a claim that has no basis in fact. Moreover, the CSKT share the same subsistence area with 6 other Tribes in Montana and Tribes in North and South Dakota and Wyoming. Have any of those tribes claimed water rights outside of their reservation in their subsistence area?

b. The 1904 Flathead Allotment Act (FAA)and 1908 Amendment According to the terms of the treaty, the reservation was opened to settlement after lands were allotted to all tribal members under the 1904 Flathead Allotment Act. The 1908 Amendment to the Flathead Allotment Act provided after the Tribal allotments completed in 1904, surplus lands on the reservation were to be open to non-Indian settlement and sold for the benefit of the Tribe.

c. The Winters Doctrine. In 1908 the Supreme Court created the doctrine that when the federal government sets aside lands for Indian reservations, it impliedly reserved enough water to fulfill the purposes of the Indian Reservation. The purpose of the reservation is derived from the language of the Treaty. The CSKT claim that they, not the United States, reserved the Flathead Indian Reservation, which is contrary to history and law.

d. The 1909 Presidential Proclamation. The President of the United States opened the Flathead Indian Reservation to settlement by non-Indians, offering for sale surplus lands authorized by Article VI of the Treaty of Hellgate and the 1908 Amendments to the FAA.

e. The 1934 Indian Reorganization Act (IRA). The IRA ended the allotment policy and consolidated Tribal ownership of remaining unallotted lands, but mandated that all lands open to settlement and purchased by non-Indians were not affected by the IRA :"Provided, however, That valid rights or claims of any persons to any lands so withdrawn existing on the date of the withdrawal shall not be affected by this act."

This means that the CSKT claims of ownership of the water and land within the Flathead Irrigation Project are invalid, being without legal merit.

f. Indian Claims Commission: The tribes were already paid by the United States Court of Claims and the Indian Claims Commission for the off-reservation lands constituting their aboriginal territory and for the lands opened to settlement under the 1904 Flathead Allotment Act.

In 1966, the Indian Claims Commission awarded the tribe $4,431,622 for off reservation lands ceded by the tribe to the United States and in 1971 the United States Court of Claims awarded the CSKT $22,631,549 for the value of reservation land opened to settlement.

Having been paid for the lands ceded and on-reservation lands open to settlement makes the Tribes claims for water ownership on these lands invalid.

2. The Compact Commission Enabling Legislation (MCA 85-2-701)

The intent of the legislature when establishing the Compact Commission was clearly stated in the compact commission enabling legislation: "... it is further intended that the state of Montana proceed under the provisions of this part in an effort to conclude compacts for the equitable division and apportionment of waters between the state and its people and the several Indian tribes claiming reserved water rights within the state."

On their website, the Compact Commission acknowledges it is supposed to quantify, or determine of the size of a federal reserved water right by 1) reaching an understanding with the federal agency holding the water right about the purpose for which the specific federal reserve was created, and 2) determining how much

water is necessary to satisfy the purpose of the reserve. The commission has failed to provide this information to the public or to legislators.

The Compact Commission has not provided a specific quantification of the amount of water awarded to the tribe for their federal reserved water right. The actual "award" is buried in the Abstracts of Water Right found in the appendices to the Compact, and totals millions of acre feet of water more than all the water awarded to every Tribe in Montana combined.

3. The Abstracts of Water Right (Appendices 5-36)

The compact references the water abstracts in the appendices, which consist of more than 1,000 pages. Article III B. on Page 14 of the compact says "Abstracts of water right appended to this Compact are a substantive element of this Compact. The language of the abstracts, including all informational remarks, shall control in the event of any inconsistency between the Compact and the abstracts of water right"

Because the Abstracts are the substantive and controlling legal documents of the CSKT compact, it is impossible to understand the compact without reviewing and understanding them.

No other Tribal Compact in Montana was accompanied by Abstracts of Water Right because the other Tribal Compacts specify the amount and limit of the volume of the Tribe's federal reserved water right up front in the text of the Compact. The Compact Commission has publicly stated that "if you want to know how much water is awarded to and the parameters of the tribe's water rights, you must look at the abstracts."

The compact effectively gives the Federal Government control of the waters of western Montana, both on and off the Flathead Reservation and this is reflected in the Abstracts of Water Right. The owner of the water right listed on the abstracts is the "United States of America, Department of Interior, Bureau of Indian Affairs, in trust for the CSKT".

4. The Unitary Management Ordinance UMO, or Law of Administration (Appendix 4)

Article I (4) on page 6 of the UMO states: Upon the Effective Date of the Compact, this Ordinance shall govern all water rights, whether derived from tribal, state or federal law, and shall control all aspects of water use, including all permitting of new uses, changes of existing uses, enforcement of water right calls and all aspects of enforcement within the exterior boundaries of the Flathead Indian Reservation. Any provision of Title 85, MCA that is inconsistent with this Law of Administration is not applicable within the Reservation.

The Compact Commission describes the UMO as the "Grand Bargain", where the Compact Commission agreed to do this extraordinary thing, frankly, with respect to agreeing to subject or to remove non-Indian rights on the reservation from the jurisdiction and control of the state, and place that somewhere else at the tribe's request." (notes of 8/2/12 Compact Commission meeting, Helena, MT)

If the compact is approved with the UMO included, 28,000 Montana citizens living within the external boundaries of the reservation will no longer be protected by state water law or state courts. Their right to due process of law will also be violated. The UMO violates the equal protection clauses of the Montana (Article

II Section 4) and the United States Constitutions (Fourteenth Amendment) and effectuates a taking under Article 5 of the U.S. Constitution.

5. The Tribe's Federal Lawsuit

In February 2014, the CSKT filed an aggressive lawsuit claiming to own all the land within its external boundaries and asked a Federal District Court to declare that they own all of the water. This suit was filed to push the state into accepting the CSKT compact that essentially has the same objective as the lawsuit. The Mountain States Legal Foundation is representing some of the individuals named in the lawsuit states:

"In their lawsuit, the Tribes claim all water and land within the boundaries of the Reservation, and thus challenge the validity of the original homesteaders' patents—

signed by the President—and seek to acquire those lands and their water rights. In addition, the Tribes challenge a federal law assigning primary responsibility for adjudicating and administrating water rights to State and not federal courts—the McCarran Amendment of 1952. -"Our clients' land was open for entry for 105 years, and in private hands for much of that time," said William Perry Pendley, president of MSLF. "The water rights appurtenant to those lands were owned fully by our clients and their predecessors for decades. We will vigorously defend those rights."

Twenty-three thousand or more people own private land on the reservation. If this lawsuit or the compact prevail, the land patents and water rights of these state citizens will be null and void.

The United States is "considering" joining the tribe in their lawsuit (ref. top of page 2), and if they are successful, land ownership and water rights throughout Montana and the west will be undermined.

6. Quantification of water rights included in other tribal compacts in Montana

The other six Montana tribal compacts specify and place limits on the amount of water awarded to the tribe up front in the text of each Compact. The CSKT compact does not.

Without specific quantification and limits, it is impossible for a legislator to know or to understand how much water being awarded to the CSKT and how it might impact other water users, the environment, land values, or the economy. This would be like writing a blank check to the federal government and tribe without understanding what is being conceded.

In contrast to state and federal law, the compact commission has publicly stated that "if the CSKT's federal reserved water rights were quantified, they would likely exceed the available supply of water" (Jay Weiner, October 2011). Without being provided the specific volume of water awarded to the CSKT, how can a legislator be sure that he/she is not agreeing to give the CSKT "more water than exists", or in this case all the water in Western Montana?

7. The Mutual Defense Clause of the Compact

Article VIII D page 68 of the compact states: "The Parties agree to defend the Compact after its Effective Date from all challenges and attacks and in all proceedings pursuant to Article VII.B and C."

Upon ratification of the compact, the mutual defense clause of the compact means that anyone who is harmed by the compact and seeks redress will be fighting the State, Tribe and the United States in court, essentially making it cost prohibitive and impossible for citizens to challenge any aspect of the compact.

8. The Crow Compact Lawsuit

Tribal members who own land that was allotted to Indians through the various allotment acts of the federal government have valuable water rights to those lands which are not part of the water right of the Tribal Government and are managed separately by the Secretary of Interior. Non-Indian owners of lands that were purchase from the original Indian allottees also have valuable water rights, called Walton Rights.

The Crow Compact Lawsuit claims that the federal government waived the allottee water rights as part of the passage of the Crow Water Compact, and that their due process rights were violated.

There are thousands of individual Indian allottees on the Flathead Indian Reservation that also have water rights separate from the Tribal government. These individual Indian water rights have not been identified or protected in the CSKT Compact.

Will the passage of the CSKT Compact lead to a similar lawsuit by individual Indian allottees on the Flathead Indian Reservation?

The extensive non-Indian Walton Rights have similarly not been protected in this Compact nor identified by the Compact Commission.

9. The Flathead Joint Board of Control Resolution Against the Proposed Compact

The proposed compact effectuates a taking of water rights belonging to irrigators within the Flathead Irrigation Project, transferring the title of these water rights to the CSKT. The Tribe then "allows" the irrigators to receive less than one third of its historical beneficial use. The taking is shown in the Abstract of Water Right contained in Appendices 10, 11, and 12. Instead of a valid water right secured by state law, irrigator's water rights are replaced by a "delivery entitlement" to water. This title transfer of the water right will do irreparable harm to agriculture, and the compact's adaptive management program will continue to ratchet down the meager amount of water set aside for irrigation in this compact. In other words, irrigation water is an ongoing target for future reductions of water. The duly elected governmental representatives of the Flathead Irrigation Project, the Flathead Joint Board of Control (FJBC), passed a resolution on December 30, 2014 which states, in part:

NOW THEREFORE, BE IT RESOLVED: The FJBC, comprised of the Flathead, Mission and Jocko Valley Irrigation Districts, representing the irrigated acreage owned in fee and which comprises approximately 110,000 acres, or 90% of the acreage contained within the FIP, strongly opposes passage by the 2015 Montana Legislature of the proposed CKST Water Compact as drafted, and recommends that irrigator's water rights be adjudicated by the Montana Water Court in a general stream adjudication process

The plan to take irrigator water rights remains in the 2015 Compact. Both the Tribes and Chris Tweeten, Chairman of the Compact Commission have stated in the recent "negotiation sessions" that "not a drop of water in the Abstracts would change." The Abstracts of Water Right demonstrate the title transfer of irrigator water to the CSKT.

A State district court judge ruled in February 2013 that the original water use agreement, now incorporated into the new proposed compact, is an unconstitutional taking without compensation, violating Article 5 of the U.S. Constitution.

The compact does not protect historical uses of irrigator water, and by giving the tribe water rights to every drop of water in the irrigation project, irrigators will be denied their valuable property rights.

10. Forest Service Compact / United States v. New Mexico:

The Forest Service Compact improperly expanded the federal reserved right doctrine because it ignored settled case law related to the intent and purpose of a federal reservation and its associated reserved water right. In United States v. New Mexico, the U.S. Supreme Court limited forest service claims only to the purpose of the reservation of land: to provide water for downstream users and for production of timber. The US Forest Service currently has 34 open claims that have been filed for water throughout the state of Montana. This is because the Forest Service Compact ratified in 2010 allows them to continue to file claims forever into the future. Instead of defining a limited scope of water claims, establishing finality, and limiting the claims of the forest service to the purpose of a forest land reservation, the compact allows the federal government a blank check in the form of future water claims.

# CSKT Water Compact Opposition Petition

Additional Documents
SENATE: Judiciary
Date: 2/16/15
Bill No. SB262

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We oppose the state of Montana giving the CSKT $55 million of taxpayer money if the compact passes.

| Name | Address | Phone Number | Signature |
|---|---|---|---|
| Kaleen Hansen | 4243 3rd Ave No. Great Falls, MT | 406-452-4005 | Kaleen Hansen |
| Ronald V Hepp | 235 Sun River Rd Great Falls, MT | 406-452-3180 | Ronald V Hepp 406-799-0648 |
| Kelly Manzer | 713 13th St SW GF | 406-453-1284 | K Manzer DM |
| Sharyn Duprey | PO BOX 986 Helena | 406-218-8215 | S Duprey |
| Scott Mayer | PO BOX 986 HELENA | 406/218-8215 | |
| Leonard LEONARD LUNDBY | 101 MANCHESTER LATERAL GREAT FALLS | 466-899-8873 | Leonard Lundby |
| Donald L. Henselin | 269 So. Manchester Rd Great Falls | 406-899-1613 | Donald L. Henselin |
| Ron Field | 73 S Manchester Rd Great Falls | 406-799 8873 | |
| Richard A Jergenson | 1391 County Line Rd Vaughn MT | 406-467-2969 | Richard A Jergenson |
| Christopher McVeda | 11 Loch Ln. Great Falls, MT 59404 | 406 781-0057 | |
| Melissa McVeda | 11 Loch Ln. Great Falls, MT 59404 | 406 750-5553 | Melissa McVeda |
| John Olson | 239 S. Manchester Great Falls MT 59404 | 406 727 2349 | |
| Brian Mader | 112 8th St. S.W Gt Falls | 406-799-1839 | |
| Mark Solie | 1440 Kraft Ln Billings MT | 406-671-3216 | |
| Ronald B Meny | P.O. Box 3467, GtFalls, mt | 406-761-1408 | Ronald B. Meny |
| TIM NEUMAN | 201 SUN RIVER RD GF MT | 406-727-8853 | Tim Neuman |
| Ken Miller | 48 Wexford lane GF MT | 406 788 1170 | Ken Miller |
| TOM MARTIN | 3117 6TH AVE SOUTH GF MT | 406 771-9371 | |
| Leonard Shumski | 59 Fawn Dr. GF, MT 59404 | 406-761-7216 | Leonard Shumski |
| Delia Shumski | 59 Fawn Dr. GF 59404 | 406-761-7216 | Delia Shumski |

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| Name | Address | Phone Number | Signature |
|---|---|---|---|
| Jeff T. Carlile | Great Falls MT. | 761 8147 | Jeff T. Carlile |
| Linda R Madsen | Great Falls MT 59404 | 452-8459 | Linda R. Madsen |
| David Allen Carlson | Choteau MT 59422 | 466-2357 | David Allen Carlson |
| Todd A Brenna | Dutton mt 59433 | 403-5953 | Todd A Brenna |
| BILL PATTON | CASCADE MT 59421 | 590-2207 | Bill Patton |
| Charlie McCuppe | GREAT FALLS, MT. 59404 | 452-1722 | Charlie McCuppe |
| Larry Dysdal | Box 912 Great Falls 59403 | 799-8312 | Larry Dysdal |
| Martha L. Sorensen | 165 Sun River Rd 59404 | 452-5536 | Martha L. Sorensen |
| Betty Mader | 18 Angus Ranch Rd | 799-8910 | Betty Mader |
| Ben Wipf | 508 Bird tail Creek Rd | 553-1920 | Ben Wipf |
| Ron Wipf | 508 Bird tail Creek Rd | 590-7809 | Ron Wipf |
| Smokey Green | 2 Pishkun Lane GF, MT | 965-3445 | Smokey Green |
| PAT A DEWAR | " " " " | " | Pat A Dewar |
| LEN BAUER | 19 PISHKUN LANE MT | 218-851-4769 | Len Bauer |
| Jean M. Wahl | 18 pishkun Lane Mt. | 965-3854 | Jean M. Wahl |
| Harold R. Wahl | " " " | " " | Harold R. Wahl |
| GARY MARTIN | 8 Pishkun Lane | 965 3235 | Gary Martin |
| BETHY EUSTANCE | 757 McTuep Rd | 453 9308 | Betty Eustance |
| Georgia A Miller | 48 Wexford Lane | 781-1830 | Georgia A Miller |
| Janine V Miller | 18 Wexford Lane | 788-6956 | Janine V. Miller |

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| Name | Address | Phone Number | Signature |
|---|---|---|---|
| Justin Schoenen | 1209 3rd Ave N 59401 | 406-750-6722 | |
| Bonnie Porter | 5 Wexford Rd LN GF. 59404 | 868-9923 | |
| Aimee Patrick | " | 317. 753. 1467 | |
| Robert Porter | " | 750 3356 | |
| Pat Plymale | 3 Wexford Lane G.F. MT 59404 | 231-4193 | |
| Rich Leuba | 25 Wilderness Ln Great Falls MT | 761-339-0455 | |
| Chuck Cowell | 23 Wilderness Lane Great Falls | 406-965-3566 | |
| Gunnar Michalson | 856 McIver Rd | 406-964-8527 | |
| Ingrid Diphagen | 856 McIver Rd | 406-964 854 | |
| Boyce Smith | 40 Haven Lane Great Falls | 406-697-3884 | |
| Cindy Smith | 40 Haven Lane Great Falls | 406-208-5056 | |
| Donna J. Hardesty | 939 McIver Rd 59404 | 406.788.6953 | |
| Charles W Koester | 33 Manchester Lane | 406-761-3011 | |
| Dale Koester | 33 Manchester Ln GTF | 4062316983 | |
| Kelly Ketchum | 12 Manchester Lane | 4062681172 | |
| Amanda Ketcham | 12 Manchester Lane | 4062681172 | |
| Sherri Parlett | 50 So Manchester Road | 406.306.9940 | |
| Chris A Bear | 50 So Manchester Road | 406 781 0769 | |
| Andrea Cumbee | 36 S. Manchester Rd | 406 4035961 | |
| Merilee Z. Bauch | 899 Wood Avenue | 406-453-0909 | |

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| Name | Address | Phone Number | Signature |
|---|---|---|---|
| Adelia Bausch | 899 Wood Ave | 414-2990807 | Adelia Bausch |
| Jerry Shepard | 14 S. Manchester Rd | 406-544-3244 | Jerry Shepard |
| ~~[illegible]~~ | ~~#12 WAGON LN 6F~~ | | |
| Tom O'Connell | 12 WAGON LN 6F | 406-781-8089 | |
| [illegible] | 34 PHEASANT LANE | 406-750-0686 | BRYAN BRUNDAGE |
| Andrea Gilman | 28 Pheasant Lane | 406-750-6419 | Andrea Gilman |
| Steve Gilman | 28 Pheasant LN | 406-868-9766 | |
| Howard Seay | 12 Pheasant LN | 406-453-6989 | Howard K Seay |
| Delores Seay | 12 Pheasant Ln | 406.453.6989 | Delores M Seay |
| Evelyn Jacobs | 18 Wagon Ln | 406-727-0022 | Evelyn Jacobs |
| Donald Jacobs | 18 Wagon Lane | 406-727-0022 | Donald Jacobs |
| ~~Todd~~ T Rhodes | 26 Wagon Lane | 406-452-[illegible] | T Rhodes |
| Jeremy Rhodes | 42 Wagon Lane | 406-564-8469 | Jeremy Rhodes |
| Laura Beth Rhodes | 42 Wagon Lane | 406-403-4417 | Laura Beth Rhodes |
| Tim Lewis | 30 Wagon Lane | 406-870-1482 | Tim Lewis |
| Tom Bernard | 46 Wagon Lane | 406-788-7404 | Tom Bernard |
| Gary Mills | 45 Wagon Lane | 406 590 0802 | Gary Mills |
| Carole Carlton | 45 Wagon Lane | 406 590 0889 | Carole Carlton |
| Tai Jones Tami | 47 Wagon Lane | 406 771-6886 | Tai Jones |
| | | | |

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| Name | Address | Phone Number | Signature |
|---|---|---|---|
| Margaret McVeda | 34 Manchester Ln Great Falls, MT | 406-453-5616 | Margaret McVeda |
| David H McVeda | 34 Manchester Ln Great Falls, MT | 406-453-5616 | David H McVeda |
| Jennifer McVeda | 34 manchester Ln. Great falls, MT | 406-217-8028 | Jennifer D McVeda |
| Terry Beeks | PO BOX 190 St Ignatius | 626-3353 | Terry K Beeks |
| Carol Lyons | 33875 St. Ig Airport Rd | 745-4451 | Carol Lyons |
| Charley Lyons | 33875 St Ignatius airport Rd | 745-4451 | Charley Lyons |
| Andrew Speer | 31328 Sunrise Hts. | 883-0457 | Andrew Speer |
| Deane Speer | 31328 Sunrise Hts Polson | 883-0457 | Deane Speer |
| | 46 Sun River | 2645341 | |
| Bill Slaughter | P.O Box 516 Hall Mt | 553 7088 | Bill Slaughter |
| | Hwy 37 Hall | 69-6980 | |
| Diane Brewer | 10538 Mt Hwy 200 Dixon MT | 246-3242 | Diane Brewer |
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| Name | Address | Phone Number | Signature |
|---|---|---|---|
| Marie Meade | 1401 2B ST S #25 | 231-3367 | Marie Meade |
| Don White | 3025 Power Rd E Floweree, MT | 899-1979 | Don White |
| Patricia Jewett | 3416 3rd Ave S Great Falls | 315-1778 | Patricia Jewett |
| Karla Preston | 200 13th Ave So Apt 14 | 788-5407 | Karla Preston |
| Todd Hansen | 4243 3RD AVE. NO. GREAT FALLS | 453-8111 | Todd Hansen |
| Riley Smith | 1200 Buttrey Dr. Havre MT | (406)231-8309 | Riley Smith |
| Hunter Hansen | 4243 3rd Ave. N. Great falls | (605) 728-9176 | Hunter Hansen |
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| Name | Address | Phone Number | Signature |
|---|---|---|---|
| JC Kantorowicz | 166 Swift Rd GT Falls | 406-788-0483 | JC Kantorowicz |
| Don Jacobs | 18 Wagon Ln " 59404 | 406-727-0022 | Don Jacobs |
| George Paul | 4007 5th St South GF 59405 | 406-761-3221 | George Paul |
| June Buckle | 3117 6th Ave South GF MT | 406-771-9371 | June E. Buckle |
| Sheridan H. Buck | 82 Bend View Lane; GF MT | 406-771-8282 | Sheridan H. Buck |
| Ruth C. Costes | 28 Embry Lane, GF, MT | 406-771-3931 | Ruth C. Costes |
| Julie Wolf | 921 Northview Ave GF MT | 406-770-3793 | Julie Wolf |
| Ron Staley | 801 3RD Ave SW. GF MT 59404 | 406-761-0016 | Ronald E. Staley |
| Rickey D. Littlefield | 401 17th St Black Eagle | 406-452-8276 406-799-8274 | Rickey D Littlefield |
| Ryan Higney | 600 7th Ave North Apt 2 Great Falls | 68-363-2760 | |
| Judy Arnold | 3920 6th Ave So., Great Falls | (406) 836-0410 | Judy Arnold |
| | 3620 Ave N, Great Falls | 406-761-1329 | |
| | 3620 Ave N, Great Falls | 406-761-4729 | |
| Jeff Wolf | 920 Northview Ave GF | 406-771-3793 | Jeff Wolf |
| GARY BISEC | 59 FAWN DR GREAT FALLS | 406-761-7216 | |
| Gerry Moore | 2325 4th Ave SW | 406-452-3468 | Gerry B Moore |
| | 419 9 Ave SW, Great Falls | 406-788-3 | |
| | 419 9 Ave SW, Great Falls | 406-788-3 | |
| David L Broadway | 712 9 St N | 406 868 0124 | |
| Terri Hardenbrook | 2209 1st Ave. N.W. | 406 761-4410 | Terri Hardenbrook |

Terri Hardenbrook

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| Name | Address | Phone Number | Signature |
|---|---|---|---|
| MICHELLE O'CONNOR | 1019 10TH AVE. S.W. GT FALLS | 836-1674 | Michelle O'Connor |
| Harry T. Wilcox | 1106 1ST Ave N. | 870-0665 | Harry T. Wilcox |
| Rich Folda Rich Falls | Ulm mt | — | Rich Folda |
| MARVIN CUNNINGHAM | 926 OLD US HWY 91, CASCADE | 788-2310 | Marvin Cunningham |
| Thomas T. Thompson | Box 52 Ulm 59485 | 866-3518 | Thomas Thompson |
| ~~James C Moore~~ | ~~Box 414 Ulm~~ | ~~866-3163~~ | |
| James C Moore | PO Box 414 Ulm Mt | 866-3163 | James C Moore |
| Judith A. Fleck | 2335-4 Av SW GF | 342-3065 | Judith A. Fleck |
| Mary Katherine Toeckes | 401-5th St So #25, GFalls | 761-7418 | Mary K. Toeckes |
| Andrea Baker | 1618 6th Ave North GF | 2883733 | Andrea Baker |
| Daniel X ~~Stott~~ | 100 Central Ave 92 | — | ~~Daniel Stott~~ |
| TERRI WASSMANN | 4005 14 Ave South GF | 868-0143 | Terri G. Wassmann |
| Patricia Mary Martinson | 824 2ave SW GF | 727 8827 | Patricia Mary Martinson |
| Kathleen M. McGee | 409-30th ST. S. Great Falls | 406-727-5828 | Kathleen M McGee |
| Diana Stimac | 757-3 1/2 Rd Ave NE | 452-4419 | Diana Stimac |
| DAN STIMAC | " " | " " | Dan Stimac |
| Sarah Peck | 1729 Colorado Ave Black Eagle | 761-4408 | Sarah A. Peck |
| Marilyn Bradshaw | 1315 Ave B N Great Falls | 761-2677 | Marilyn K. Bradshaw |
| ~~Carol Mehr~~ | | | |
| CAROL MEHRENS | 625 26TH Ave N.E. | 453-7723 | Carol Mehrens |
| James Kelleher | 3501-7th St. N.E. | 217-2372 | James E. Kelleher |
| Patsy I. Kelleher | 3501-7th St. N.E. | 217-2372 | Patsy I. Kelleher |

# MINUTES

## MONTANA SENATE
## 64th LEGISLATURE - REGULAR SESSION

## COMMITTEE ON JUDICIARY

**Call to Order:** Chair Scott Sales, on February 20, 2015 at 9:00 AM, in Room 303 Capitol

## ROLL CALL

**Members Present:**

Sen. Scott Sales, Chair (R)
Sen. Jennifer Fielder, Vice Chair (R)
Sen. Robyn Driscoll (D)
Sen. Jedediah Hinkle (R)
Sen. Douglas (Doug) Kary (R)
Sen. Cliff Larsen (D)
Sen. Mary McNally (D)
Sen. Mary Sheehy Moe (D)
Sen. Diane Sands (D)
Sen. Nels Swandal (R)
Sen. Chas Vincent (R)

**Members Excused:** Sen. Kris Hansen (R)

**Members Absent:** None

**Staff Present:** Julianne Burkhardt, Legislative Branch
Pam Schindler, Committee Secretary

**Audio Committees:** These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

**Committee Business Summary:**

| | |
|---|---|
| Hearing & Date Posted: | HB 28, 2/11/2015; HB 111, 2/11/2015; SB 313, 2/16/2015; SB 318, 2/16/2015; SB 322, 2/16/2015 |
| Executive Action: | SB 262-Do Pass |

## HEARING ON SB 313

**Opening Statement by Sponsor**:

00:01:29 Sen. Mike Phillips (D), SD 31, opened the hearing on SB 313, Constitutional amendment to require adoption of revenue estimate.

**Proponents' Testimony**:

None

**Opponents' Testimony**:

None

**Informational Testimony**:

None

**Questions from Committee Members and Responses**:

00:03:53 Sen. Sands
00:04:27 Sen. Phillips

**Closing by Sponsor**:

00:05:13 Sen. Phillips

## HEARING ON HB 28

**Opening Statement by Sponsor**:

00:08:27 Rep. Jennifer Eck (D), HD 79, opened the hearing on HB 28, Require parole hearings to be video and audio recorded.

**EXHIBIT(jus39a01)**
**EXHIBIT(jus39a02)**

**Proponents' Testimony**:

00:14:20 Gary Mihelish, physician, member, Re-entry Task Force, Department of Corrections (COR)
00:17:42 Patti Jacques, self, Helena
00:18:39 Al Smith, self, Great Falls
00:20:32 Timothy Allred, executive director, Board of Pardons and Parole (BOPP), Department of Corrections (COR)
00:21:31 Steve Cape, Montana Coalition for Safety and Justice (MCSJ)
00:23:16 Bonnie Jorgensen, self, Great Falls
00:24:37 Hal Jorgensen, self, Great Falls

**Opponents' Testimony**:

None

**Informational Testimony**:

None

**Questions from Committee Members and Responses**:

00:26:32 Sen. Moe
00:27:00 Mr. Allred, COR
00:28:16 Sen. Moe
00:28:31 Rep. Eck
00:29:26 Chairman Sales
00:29:35 Rep. Eck

**Closing by Sponsor**:

00:30:36 Rep. Eck

## HEARING ON HB 111

**Opening Statement by Sponsor**:

00:31:32 Rep. Keith Regier (R), HD 4, opened the hearing on HB 111, Revise sentencing for felony DUI.

**Proponents' Testimony**:

00:34:49 Rebecca Sturdevant, Mothers Against Drunk Driving (MADD), Montana Common Sense Coalition (MCSC)
**EXHIBIT(jus39a03)**

00:38:46 Jon Bennion, assistant attorney general, Department of Justice (DOJ)
00:39:21 Mark Murphy, Montana County Attorneys Association (MCAA)

**Opponents' Testimony**:

**Informational Testimony**:

00:43:01 Kevin Olson, administrator**,** Parole and Probation Division**,** Department of Corrections (COR)
00:43:19 Erin Inman, traffic safety consultant/DUI Law, former county attorney

**Questions from Committee Members and Responses**:

00:43:47 Sen. Sands
00:44:16 Mr. Murphy, MCAA

00:45:28 Sen. Fielder
00:46:04 Jon Bennion, DOJ
00:47:46 Sen. Fielder
00:48:43 Rep. Regier
00:49:39 Sen. Fielder
00:49:44 Ms. Inman, consultant
00:51:01 Sen. Sands
00:51:19 Mr. Murphy
00:54:14 Sen. Larsen
00:54:46 Rep. Regier
00:55:01 Mr. Olson, COR

**Closing by Sponsor**:

00:58:42 Rep. Regier

## HEARING ON SB 318

**Opening Statement by Sponsor**:

00:59:33 Sen. Nels Swandal (R), SD 30, opened the hearing on SB 318, Revise laws related to partner and family member assault.

**Proponents' Testimony**:

01:00:56 Jeff Sealey, self, Helena
01:04:05 Anna Saverud, prosecutor/domestic violence, City of Bozeman
01:07:35 Robin Turner, public policy director, Montana Coalition Against Domestic and Sexual Violence (MCADSV)
01:08:44 John Quandt, self

**Opponents' Testimony**:

None

**Informational Testimony**:

None

**Questions from Committee Members and Responses**:

01:12:47 Sen. Sands
01:13:02 Sen. Swandal

**Closing by Sponsor**:

01:14:04 Sen. Swandal

## HEARING ON SB 322

**Opening Statement by Sponsor**:

01:14:38 Sen. Jennifer Fielder (R), SD 7, opened the hearing on SB 322, Provide for Fourth Amendment protections.

**Proponents' Testimony**:

None

**Opponents' Testimony**:

01:22:03 Mark Cadwallader, staff attorney, Department of Labor and Industry (DOL)
01:26:09 Francis Clinch, chief legal council, Department of Public Health and Human Services (DPHHS)
01:34:11 Mark Murphy, Montana County Attorneys Association (MCAA)

**Informational Testimony**:

None

**Questions from Committee Members and Responses**:

01:42:16 Sen. Sands
01:43:25 Sen. Fielder
01:45:18 Sen. Sands
01:45:43 Mr. Clinch, DPHHS
01:47:33 Sen. Hinkle
01:48:01 Mr. Clinch
01:49:51 Sen. Hinkle
01:50:03 Sen. Fielder
01:51:17 Sen. Kary
01:51:39 Sen. Fielder

**Closing by Sponsor**:

01:53:01 Sen. Fielder

01:55:24 Recess
02:06:30 Reconvene

## EXECUTIVE ACTION ON SB 262

02:06:47 **Motion:** Sen. Vincent moved that **SB 262 DO PASS**.

**Discussion:**

02:07:11 Sen. Fielder
02:13:55 Sen. Larsen
02:17:27 Sen. Hinkle
02:25:16 Sen. Vincent
02:29:24 Sen. Fielder
02:32:24 Sen. Vincent
**EXHIBIT(jus39a04)**

02:40:11 Sen. Fielder
02:44:02 Sen. Vincent
02:47:34 Sen. Hinkle
02:48:11 Sen. Vincent
02:48:33 Chairman Sales

02:54:05 **Vote:** Motion carried 8-4 by roll call vote with Sen. Fielder, Sen. Hansen, Sen. Hinkle and Sen. Sales voting no. Sen. Hansen voted by proxy.

## ADJOURNMENT

Adjournment: 10:54 A.M.

_____
Pam Schindler, Secretary

ps

Additional Documents:

**EXHIBIT(jus39aad.pdf)**

SENATE JUDICIARY
Exhibit No. 4
Date: 2/20/15
Bill No. SB 262



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# Highlighted Events

## CSKT Compact Education Session

- CSKT Compact Education Session - Room 303 - Video
- CSKT Eompact Education Session - Informational Page



Last Modified:
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# CSKT Compact Education Session

Saturday, February 7, 10:00 a.m. - Room 303
Hosted by Senator Chas Vincent

This event is an informational session for legislators regarding the CSKT Water Compact. The public is welcome to observe from the 4th floor gallery.

**Documents for this educational session are included below:**

- CSKT Water Rights Summary
- Response to Six Reasons to Reject the CSKT Water Compact
- Letter to Senator Vincent in Response to Letter from Mr. Richard Simms
- Flathead System Compact Water and Hungry Horse FAQs
- Irrigator FAQs
- Local County Government FAQs
- Non-Indian Reservation FAQs
- Legislator FAQs
- Constitutional FAQs
- Constitutional Memo
- Understanding Abstracts for Statements of Claim in Montana
- Cover Letter from Colleen Coyle, Director, Water Services, Ponderosa Advisors LLC
- Article: Process and Implications of Adjudication through Litigation of CSKT Reserved Water Right Claims vs. Legislative Approval of a Compact
- DNRC and CSKT Water Compact and Appendices

## Reserved Water Rights Compact Commission



**SB 262 Hearing**
Video of February 16, 2015 Hearing

**CSKT Water Compact Education Session for Legislators**

Video of Water Compact Education Session for Legislators February 7, 2015

**2015 Public Meeting Audio**

**2015 Public Meeting Materials**

**2014 Public Meeting Audio**

**2014 Public Meeting Materials**

**2014 Negotiation Materials**

**WPIC Documents**

**2013 Compact Documents**

**2013 Bills**

**2008-2012 Negotiation Document**

**Legislator Informational Materials**

Can't open the pdf's? Make sure you have the latest version of Adobe Acrobat Reader.

**DNRC Home**

# Confederated Salish and Kootenai Tribes

The proposed CSKT-Montana Compact is the result of more than a decade of negotiations to resolve the Tribes claims to reserved rights within the State. The 2013 Legislature did not ratify a prior version of the Compact. Following a request for a limited reopening of negotiations by Governor Bullock in early 2014, the State and Tribes negotiated key provisions relating to irrigation use and instream flows on the Reservation and incorporated recommendations from the Montana Water Policy Interim Committee following two years of review.

On December 10, 2014, the negotiating parties reached an agreement that fulfills the State's legal obligation to recognize the CSKT's reserved rights and simultaneously provides protection for existing uses on and off the Reservation. The Compact will make new water available for commercial and irrigation use, end the water administration void on the Flathead Reservation, allow for economic development under conditions of legal certainty on and off the Reservation, and facilitate the completion of the statewide general stream adjudication. In addition, the Compact would establish a technical team with irrigator representation to implement irrigation project upgrades to protect historic irrigation use and meet Tribal in-stream flow targets.

On January 12, 2015, the Montana Reserved Water Rights Compact Commission unanimously voted to forward the proposed CSKT Compact to the 2015 Legislature. Legislative information will be posted on this site as it becomes available.

PDF files viewable only with the Acrobat Reader.

### January 2015 Revised Compact

SB 262 Bill Text

Proposed Compact Approved by RWRCC, January 12, 2015

Legislator Informational Materials

Summary of Water Rights Quantified by Compact-2015

Compact Summary

Off-Reservation Impact Analysis-2015

### 2015 Appendices

- Appendix 1 (Hydrologic Basin Maps)
- Appendix 2 (FIIP Influence Area Map)
- Appendix 3.1 (MEFs, TIFs, Minimum Reservoir Pool Elevations)
- Appendix 3.2 (River Diversion Allowances)
- Appendix 3.3 (Historic Farm Deliveries)
- Appendix 3.4 (Implementation Schedule)
- Appendix 3.5 (Adaptive Management and CITT)
- Appendix 3.6 (Rehabilitation and Betterment)
- Appendix 3.7 (Determination of Wet, Normal and Dry Years)
- Appendix 4 (Proposed Law of Administration/Ordinance)
- Appendix 5 (FIIP Abstracts in 76L and 76LJ and Maps)
- Appendix 6 (Map of Non-FIIP Historic Irrigated Acres Lands Eligible for Registration)
- Appendix 7 (Bureau of Reclamation Modeling Report
- Appendix 8 (State Biological Constraints Evaluation)
- Appendix 9 (Flathead System Compact Water Abstract and Map)
- Appendix 10 (Natural Node Instream Flow Abstracts and Maps)
- Appendix 11 (FIIP Instream Flow Nodes Abstracts and Maps)
- Appendix 12 (Other Instream Flow Abstracts and Maps)
- Appendix 13 (Interim Instream Flows and Interim Reservoir Pool

Elevations
- Appendix 14 (Interim Instream Flow Protocols)
- Appendix 15 (FIIP Reservoir Minimum Pool Abstracts and Maps)
- Appendix 16 (Wetlands Abstracts and Maps)
- Appendix 17 (High Mountain Lakes Abstracts and Maps)
- Appendix 18 (Flathead Lake Abstract and Map)
- Appendix 19 (Boulder Creek Hydroelectric Project Abstract and Map)
- Appendix 20 (Hellroaring Hydroelectric Project Abstract and Map)
- Appendix 21 (MTFWP Wetlands Abstracts and Maps)
- Appendix 22 (MTFWP Claim Number 76L 153988-00 to be Co-Owned by Tribes)
- Appendix 23 (USFWS Wetland Abstracts and Maps)
- Appendix 24 (USFWS Claims to be Co-Owned by Tribes)
- Appendix 25 (Kootenai Mainstem Instream Flow Right Abstract)
- Appendix 26 (Swan Mainstem Instream Flow Right Abstract)
- Appendix 27 (Lower Clark Fork Mainstem Instream Flow Right Abstract)
- Appendix 28 (MTFWP Claims to be Decreed as Part of the Compact)
- Appendix 29 (MTFWP Claims Not to be Decreed as Part of the Compact)
- Appendix 30 (Former Milltown Dam Instream Flow Abstracts)
- Appendix 31 (Former Milltown Dam Instream Flow Enforceable Level Technical Document)
- Appendix 32 (2004 DNRC-MTFWP Painted Rocks Contract)
- Appendix 33 (1958 Painted Rocks Contract Including Amendment)
- Appendix 34 (1992 MTFWP-BOR Lake Como Contract)
- Appendix 35 (Placid Creek Instream Flow Right Abstract and Map)
- Appendix 36 (Kootenai River Tributary Instream Flow Abstracts)
- Appendix 37 (Flathead Reservation Unitary Water Management Board Forms)
- Appendix 38 (Flathead Proposed Preliminary Decree)

**2013 Compact Documents**

**2008-2012 Negotiation Documents**

### Hungry Horse Reservoir

Below are links to a cover letter and a report detailing the State's response to the Tribes' proposal for access to up to 90KAF of releases from Hungry Horse Reservoir as a component of a comprehensive water rights settlement.

Below is also a link to the Bureau of Reclamation's report modeling the possible effects of the Tribes' proposal.

9-14-11 Revised HH Biological Constraints Report
HH Response Cover Letter
HH Biological Constraints Report
April 2010 Bureau of Reclamation Draft Modeling Report

**CONTACT**

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FORESTRY
BOARD OF OIL & GAS
RESERVED WATER RIGHTS COMPACT COMMISSION
TRUST LAND MANAGEMENT
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# MONTANA WATER LAW
# KEY TERMS & CONCEPTS

## WATER RIGHT KEY TERMS

**Abandonment**: Intentional, prolonged nonuse of a water right, resulting in its loss

**Appropriate**: To capture, impound, or divert water from its natural course and apply toward a beneficial use.

**Basin**: The area drained by a river and its tributaries; a watershed. Montana has been divided into 90 water rights basins. *See* *http://dnrc.mt.gov/wrd/water_rts/adjudication/*

**Call:** The holder of a water right with a senior priority date and an immediate need for a use of water may require a holder of a water right with a junior priority date to refrain from appropriating water otherwise physically available until the senior water right is satisfied. This curtailment is termed "making a call".

**Consumptive Use**: A beneficial use of water that reduces supply, such as irrigation or household use.

**Diversion**: An open, physical alteration of a stream's flow away from its natural course.

**Flow Rate**: That rate at which water is diverted from a source, generally expressed in cubic feet per second or "cfs".

**Ground Water**: Any water beneath the land surface, bed of a stream, lake, or reservoir.

**Instream Flow**: Water left in a stream for nonconsumptive uses such as preservation of fish or wildlife habitat.

**Junior Appropriator**: A secondary user on a watercourse who holds a water right inferior to previous (senior) users.

**Priority Date**: The official date of an appropriation, generally the date of established intent; used in determining seniority among water users.

**Prior Appropriations**: The principle governing water law in Montana, namely that first in time is first in right, and that a senior appropriator is entitled to use the last drop of water to which that user is entitled before a junior appropriator may use the first drop of theirs.

**Senior Appropriator**: An original user on a watercourse who holds a water right superior to all subsequent (junior) users.

**Surface Water**: Water above the land surface, including lakes, rivers, streams, wetlands, wastewater, flood water, and ponds.

**Watercourse**: Any naturally occurring stream or river, not including ditches, culverts, or other constructed waterways.

**Watershed**: A geographic area that includes all land and water in a drainage system.

## MEASUREMENT TERMS & ACRONYMS

**Acre Foot (AF)**: A measurement based on the volume of water that will cover 1 acre to a depth of 1 foot.

**Acre Feet per Year (AFY)**: Maximum volume allowed for use during the course of a year

**Cubic Feet per Second (cfs)**: A measurement based on a rate of water flow that will supply 1 cubic foot of water in 1 second.

**Gallons per Minute (gpm)**: A measurement based on a rate of water flow that will supply 1 gallon of water in 1 minute.

**Miner's Inches (MI)**: By Montana law, 1 cfs is approximately equal to 40 miner's inches.

**Volume**: Amount of water diverted over a specific period of time.

**DNRC QUICK CONVERSION CHART**

| | |
|---|---|
| MI x 11.22 – GPM | CFS x 40 = MI |
| MI ÷ 40 = CFS | CFS x 448.8 = GPM |
| MI x .0495 = AF/ DAY | CFS x 1.98 = AF/ DAY |
| GPM ÷ 11.22 = MI | AF/DAY ÷ 1.98 = CFS |
| GPM ÷ 448.8 = CFS | AF/DAY x 226.67 = GPM |
| GPM ÷ 226.67 = AF/DAY | AF/DAY ÷ .0495 =MI |

For DNRC's full conversion & usage chart:
https://dnrc.mt.gov/wrd/water_rts/wr_general_info/wrforms/615.pdf

## COMPACTS & RESERVED WATER RIGHTS

**Aboriginal Water Right**: Aboriginal (or original) title to Indian lands and waters established long prior to the creation of an Indian reservation by Indian occupation of the land and use of water for hunting, fishing and spiritual purposes. These rights typically become recognized when a reservation is established by treaty or statute on aboriginal lands. The recognized priority date is usually "time immemorial," *see definition below. See also U.S. v. Adair,* 723 F.2d 1394, 1412-15 (9th Cir. 1983).

**Compact**: A legal agreement between Montana and a federal agency or an Indian tribe determining the quantification of federally or tribally claimed water rights.

**Reserved Water Right**: A special water right accompanying federal lands or Indian reservations, holding a priority date originating with the creation of the land.

**Time Immemorial**: Time extending beyond the reach of memory, record, or tradition, indefinitely ancient, "ancient beyond memory or record;" a time before legal history and beyond legal memory.

**Walton Right**: A non-Indian purchaser of an Indian allotment also acquires the Indian allottees' share of the reservation's irrigation water rights; the priority date of the right remains the date of the creation of the reservation; and, unlike the Indian allottee, the non-Indian purchaser loses the reserved water right if it is not put to use. The non-Indian purchaser is limited to the quantity of water that he/ she puts to use with reasonable diligence after the transfer of title to the land. *See Colville Confederated Tribes v. Walton,* 647 F.2d 42 (9th Cir. 1981) and William C. Canby, Jr., *American Indian Law in a Nutshell* 485-487 (West 2009).

**Winters Doctrine**: Amalgamation of federal case law defining a reserved Indian water right as a right to water sufficient to carry out the purposes of the reservation with a priority date as of the date of establishment the reservation. *See Winters v. U.S.,* 207 U.S. 564 (1908); *Arizona v. California,* 373 U.S. 546 (1963); *Cappaert v. U.S.,* 426 U.S. 128 (1976); *U.S. v. Adair,* 723 F.2d 1394, 1408-1411 (9th Cir. 1983). Under the Montana Water Use Act, tribal reserved water rights must be resolved through Montana's statewide adjudication process. The Montana Supreme Court has ruled that the Act is adequate to adjudicate federal and Indian reserved water rights. *State ex rel. Greely v. Confed. Salish & Kootenai Tribes,* 219 Mont. 76, 95 (1985). However, though the Water Court can adjudicate tribal reserved rights, its decisions will be subject to scrutiny by both the Montana and U.S. Supreme Courts. *Id.*

## ADJUDICATION TERMS

**Adjudication**: A judicial procedure decreeing the quantity and priority date of all existing water rights in a basin.

**Administrative Rules of Montana (ARM)**: A collection of state agency rules used in the implementation of federal and state codes.

**Appeal**: To transfer a case from a lower to a higher court for a new hearing.

**Claim**: An assertion that a water right exists, usually occurring during the adjudication process.

**Decreed Water Right**: A water right issued by the court upon adjudication of a stream.

**Existing Right**: A Montana water right originating on or before July 1, 1973, that is subject to adjudication.

**Injunction**: A court order prohibiting a specific act or commanding the undoing of some wrong or injury.

**Issue Remark**: A statement added to an abstract of water right in a water court decree by the department or the water court to identify potential factual or legal issues associated with the claim. The term also includes "gray area remarks" that were the result of the verification process.

**Interested Person**: A person with a real property interest, water right, or other economic interest that may be directly affected.

**Montana Water Use Act (MWUA)**: The laws of Montana that govern water rights adjudication and administration. Found at Title 85 of the Montana Code Annotated.

**Murphy Right**: In 1969, the Montana Legislature enacted legislation granting the Montana Fish and Game Commission authority to appropriate unappropriated waters on 12 streams to maintain instream flows for the preservation of fish and wildlife habitat. These are known as Murphy rights after Representative James E. Murphy, who sponsored the measure. The Legislature established specific reaches of the following sources: Big Spring Creek in Fergus County; Blackfoot River in Missoula and Powell Counties; Flathead River and Middle Fork Flathead River in Flathead County; South Fork Flathead River in Flathead and Powell Counties; Gallatin River and West Gallatin River in Gallatin County; Madison River in Madison and Gallatin Counties; Missouri River in Broadwater, Lewis and Clark, and Cascade Counties; Rock Creek in Granite and Missoula Counties; Smith River in Cascade and Meagher Counties; and Yellowstone River in Stillwater, Sweet Grass, and Park Counties. The priority dates are 1970 or 1971.

**Preponderance of the Evidence**: Convincing evidence that shows that the facts are more probable than not. Standard used in the Montana Water Court to determine water right validity.

**Valid:** Recognized by law; legal and enforceable. Under Montana water law *validity* is used to determine water rights possession and assignment. Only those with valid water rights have an enforceable right to water. Validity for pre-1973 rights is determined through the adjudication process in the Montana Water Court. Post-1973 water rights are obtained through the permitting process with DNRC.

**Vested:** A term used in some other Western states to describe water rights that are secured in the possession of or assigned to a person. Montana water law does not use this term or concept for determining water rights possession or assignment. *See* Valid, above.

**Water Court:** Only Montana court with exclusive jurisdiction over the adjudication of water rights claims.

**Water Master:** An attorney versed in water law who serves at the discretion of the Water Court.

## OBTAINING NEW WATER RIGHTS & PERMITTING

**Permit**: An authorization to use water, issued by the state, specifying conditions such as type, quantity, time, and location of use, and required for any new appropriation of water under State law after June 30, 1973.

**Provisional Permit**: Temporary permit for use of water.

## ADDITIONAL HELPFUL RESOURCES

Water Rights in Montana, April 2014: http://leg.mt.gov/content/publications/environmental/2014-water-rights-handbook.pdf (Most of the definitions in this handout are taken from this publication)

William C. Canby, Jr., *American Indian Law in a Nutshell* (West 2009)

DNRC Available Resources:

- Water Adjudication Bureau: http://dnrc.mt.gov/wrd/water_rts/adjudication/
- Reserved Water Rights Compact Commission: http://www.dnrc.mt.gov/rwrcc/
- Montana Closed Basins Map: http://dnrc.mt.gov/wrd/water_rts/appro_info/basinclose-cgw_map.pdf

**NOTE:** The proposed Compact contains a comprehensive list of definitions. Those definitions, and any other legal definitions under State law are controlling for purposes of legal interpretation. The definitions contained in this document are merely intended to help the reader familiarize themselves with basic principles of Montana water law.

# Water Right Summary of 2015 CSKT- Montana Compact

| Description | Priority Date | Count | Purpose | Appendix | Water Right | Description in Practical Terms | Flow Rate (cfs) | Volume (acre-feet) |
|---|---|---|---|---|---|---|---|---|
| **On-Reservation Water Rights** | | | | | | | | |
| Flathead Indian Irrigation Project (FIIP) Water Use Right | 1855 | 3 | Irrigation | Appendix 5 | 76L 30052930 - 76L 30052932 | May serve up to, but not more than 135,000 acres (currently 128,242 acres); Exercise of this right satisfied by meeting the RDA values for each RDA Area described in Appendix 3.2. FIIP Irrigators entitled to delivery of water pursuant to Article IV.D.2. | 220 Individual Points of Diversion | Maximum Diverted: 360,950 |
| Flathead System Compact Water Right | 1855 | 1 | Any | Appendix 9 | 76LJ 3006381 | Direct flow water right from the Flathead River, including Flathead Lake; Up to 90,000 AF per year of storage water from Hungry Horse Reservoir; state has ability to issue leases for 11,000 AF for DCMI mitigation off Reservation; Additional water can be leased from Tribes for any beneficial purpose (on or off Reservation) and is available for FIIP during Shared Shortages. | Details in Abstract | Diverted: 229,383<br>Consumed: 128,158 |
| Instream Flow - Natural Sites | Time Immemorial | 102 | Fish & Wildlife | Appendix 10 | 76LJ 30052674- 76L 30052775 | Nonconsumptive instream use; cannot be changed; located in headwaters above existing uses; no existing uses subject to call. | Individual Monthly Values | N/A |
| Instream Flow - FIIP Sites | Time Immemorial | 33 | Fish & Wildlife | Appendix 11 | 76L 30052776- 76L 30052808 | Nonconsumptive instream use; cannot be changed; administered with regard to FIIP diversions according to Article IV.C-F of Compact; administered with regard to existing non-project irrigation uses according to Article III.G.3 of the Compact. | Individual Monthly Values | N/A |
| Instream Flow - Other Sites | Time Immemorial | 49 | Fish & Wildlife | Appendix 12 | 76LJ 30052818- 76L 30052866 | Nonconsumptive instream use; cannot be changed; enforcement schedules developed per UMO section 2-1-115 must allow for exercise of all valid existing water rights. | Individual Monthly Values | N/A |
| FIIP Reservoir Minimum Pool | 1855 | 2 | Fish & Wildlife | Appendix 15 | 76L 30052927 & 76L 30052927 | Pool minimums designated to protect reservoir biology. | 54 Individual Points of Diversion | Evaporation |
| Wetlands - Protective | Time Immemorial | 12 | Fish & Wildlife | Appendix 16 Appendix 21 Appendix 23 Appendix 24 | 76L 30052661- 76L 30052667, 76L 30052922-, 76LJ 30052926 | Cannot be used to make call on any water right; no artificial means of diversion or control of water that can be used to manipulate or otherwise affect the water supply, these water rights serve to protect existing Wetlands from adverse effects from new permits and changes to existing water rights. | N/A | N/A |
| High Mountain Lakes | Time Immemorial | 6 | Fish & Wildlife | Appendix 17 | 76L 30052668- 76L 30052673 | No artificial means of diversion or control of water; Located in headwaters above all existing water uses, therefore no existing uses will be subject to call. | N/A | N/A |
| Flathead Lake | Time Immemorial | 1 | Fish & Wildlife | Appendix 18 | 76LJ 30052867 | Nonconsumptive minimum lake elevation water right that protects the natural elevation level of Flathead Lake, below elevations maintained by Kerr Dam. No artificial means of diversion or control of water. Enforceable at natural lake level 2883' in elevation; Does not affect any existing water users or allow Tribes to drain the lake to that level. | N/A | N/A |
| Power Generation - Boulder & Hellroaring | 1855 | 3 | Hydropower | Appendix 19 Appendix 20 | 76LJ 30052870- 76LJ 30052872 | Non consumptive hydro power water rights. | 8<br>6 | nonconsumptive |

# Water Right Summary of 2015 CSKT- Montana Compact

| Description | Priority Date | Count | Purpose | Appendix | Water Right | Description in Practical Terms | Flow Rate (cfs) | Volume (acre-feet) |
|---|---|---|---|---|---|---|---|---|
| **Off-Reservation Instream Flow Water Rights** | | | | | | | | |
| Kootenai River | Time Immemorial | 1 | Instream Fishery | Appendix 25 | 76D 30063810 | Nonconsumptive instream flow right. Enforceable daily flow schedule based on seasonal water supply under dry year conditions. Not enforceable up tributaries or at all so long as Libby Dam remains in existence, and the Army Corps is in compliance with 2008 Biological Opinion. | Individual Daily Values | N/A |
| Swan River | Time Immemorial | 1 | Instream Fishery | Appendix 26 | 76K 30063809 | Nonconsumptive instream flow right. Enforceable daily flow schedule based on seasonal water supply under dry year conditions. Enforceable only against surface water irrigation and over 100 gallons per minute hydrologically connected groundwater irrigation rights. Water right does not affect legal availability for new permit applicants under current DNRC regs. | Individual Daily Values | N/A |
| Clark Fork River | Time Immemorial | 1 | Instream Fishery | Appendix 27 | 76N 30063808 | Nonconsumptive instream flow right that equals the Cabinet Gorge and Noxon Dam minimum FERC requirement currently established at 5,000 cfs. Should the FERC requirement be lowered, the enforceable flow rate for this water right must be reduced to match. Enforceable only against mainstem (not tributary) surface water irrigation and over 100 gallons per minute hydrologically connected groundwater irrigation rights. Right does not affect legal availability for new permit applicants under current DNRC water right permitting regulations. | 5,000 | N/A |
| North Fork Placid Creek | Time Immemorial | 1 | Instream Fishery | Appendix 35 | 76F 30063811 | Nonconsumptive instream flow right. There is only one (FIIP) diversion upstream of the protected stream reach; historic diversion levels for this right are maintained. | 10 | N/A |
| Kootenai Tributaries: Big, Steep, Sutton, and Boulder Creeks | Time Immemorial | 4 | Instream Fishery | Appendix 36 | 76D 30063807, 76D 30052869, 76D 30063806, & 76D 30052868 | Nonconsumptive instream use; Cannot be changed; Located in headwaters above all existing water uses, therefore no existing uses subject to call. | Individual Daily Values | N/A |
| Former Milltown Dam Water Right | 1904 | 2 | Instream Fishery | Appendix 30 Appendix 31 | 76M 94404 01 & 76M 94404 02 | Former Milltown Dam hydroelectric water right is changed by the Compact into 2 nonconsumptive instream flow rights. Enforceable daily flow schedule based on seasonal water supply under dry year conditions. Enforceable only against junior surface water irrigation and > 100 gallons per minute groundwater irrigation rights after 4 of 5 consecutive days below minimum flow. Requires 10 years stakeholder planning effort. | Individual Daily Values | N/A |
| **Total Water Rights Recognized** | | 222 | | | | | | |

- This summary does not include existing water rights to be co-owned by the Tribes and DFWP as these are previously existing, filed water rights-appendices 22, 24, 28, 30
- For more information email: dnrrwrcc@mt.gov or call 406-444-5700

# Most Frequently Asked Questions/Assertions by Non-Indian Reservation Residents

## Why does the Commission support this diminishment of citizenship status for non-tribal member state citizens who live within the Reservation?.

**Response:** This question assumes that the State has and properly should have full control of administration of water rights within the Reservation.

As to the first part, the State does not currently have control of administration of water rights within the Reservation, because, since 1996, the Montana Supreme Court has prevented the State of Montana from issuing new water use permits on the Reservation until tribal reserved water rights are fully quantified and determined.

As to the second part, the Tribes have reserved water rights and treaty rights under both federal and state law. Those rights affect water rights arising under State law. In light of that, the question of who administers the water rights within the Reservation is one of the questions that has to be answered by any Compact between the State and the Tribes. Montana's Compacts with some other Tribes have set up dual administration, with the Tribes administering tribal rights and the State administering state-based rights. Even with dual administration, the State wouldn't fully control administration of water rights within the Reservation. In this Compact, the negotiated resolution sets up a unitary administration under a Board that has both tribal and non-tribal membership, a practical solution given the circumstances of this Reservation. The alternative to the Compact solution to the problem would be litigation in which a court would try to find a solution, but even the court would be constrained to recognize tribal rights under applicable law, meaning the solution would not be for full State control over water rights within the Reservation.

The Compact will bring the current uncertainty to an end in a way that balances tribal and non-tribal interests and reflects the realities of the applicable law for both the Tribes and the State.

## If Article VIII of the Montana constitution applies fully to these individuals and their property why would Article IX not apply fully as well? (Article VIII is taxation, Article IX is Natural Resources.)

**Response:** Article IX does fully apply to non-Tribal member state citizens who live within the Reservation, and the Compact doesn't change that. Article IX section 3 subsection (3) provides that "All surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law." Under this section, the State owns all the water, and its job is to ensure that "its people" can use the water as set forth in applicable law. Nothing in the Compact changes that, as the Commission cannot, does not and will not negotiate over ownership. What the Compact does is make agreements as to the rights to use of water owned by the State. The Compact is also consistent with the provisions of Article IX section 3 subsection (4) that the legislature shall provide for the administration, control, and regulation of water rights and establish a system of centralized records. This is so because, in approving the Compact, the legislature will be providing for a system of administration of water, one which will create a database which operates with the State's DNRC database, to create a centralized system of records.

# Most Frequently Asked Questions/Assertions Regarding Constitutionality of the CSKT Water Compact

## The Compact is unconstitutional as a Fifth Amendment taking.

**Response:** The CSKT Water Compact Is Not a Taking Under the Fifth Amendment to the United States Constitution. It is very unlikely that a court would consider the Compact to be a taking under the Fifth Amendment because it does not take title from any property owners. The Compact is explicit: "Nothing in this compact shall be construed or interpreted . . . [t]o transfer, convert, or otherwise change the ownership or trust/fee status of land on the Reservation. Specifically, nothing in this Compact changes fee owned land to trust land or trust land to fee land, or in any way alters the ownership status of land within the exterior boundaries of the Flathead Indian Reservation." January 12, 2015 Proposed Compact, Article V(B)(24), p. 58. Moreover, while the Compact does provide for a prioritization and regulated distribution of water on the Reservation, that does not make it a taking under the Fifth Amendment because it does not render non-Tribal water users' rights economically valueless. In fact, in many ways the Compact adds value and stability to existing water use claims by limiting the Tribes' ability to call junior water rights. Arguments that the Compact is a taking appear to be based on either a misunderstanding of what constitutes a taking under the Fifth Amendment or, perhaps more likely, a misunderstanding as to what the Compact actually does.

## The Compact is unconstitutional because it violates Equal Protection by treating Reservation residents who are not Tribal Members differently from other Montana citizens.

**Response:** The Compact Does Not Violate Equal Protection By Treating Off-Reservation Water Users Differently Than On-Reservation Water Users. The Compact does not violate Equal Protection by treating non-Tribal water users on the Reservation differently than water users in other parts of the state. Non-Tribal water users on the Reservation are not similarly situated with water users in the rest of the State because of the unique water rights that the Tribes have under federal law. The State is not free to disregard the Tribes' superior water rights on the Reservation, and that naturally has implications for non-Tribal water users living on the Reservation. Thus, the Montana Supreme Court and the United States Supreme Court have recognized that it does not violate equal protection to treat tribal members differently when doing so is "rationally tied to the fulfillment of the unique obligation" to Indians that is created by federal law. *State v. Shook*, 313 Mont. 347, 351 (2002); *Morton v. Manacari*, 417 U.S. 535, 555 (1974). In short, even if the Compact is viewed as treating water users differently, those distinctions are based on federally defined Indian reserved rights that the State is required to recognize and administer.

## The Compact is unconstitutional because it violates Article IX, Section 3 of the Montana Constitution by giving the Tribes ownership of water.

**Response:** The Compact Does Not Violate Article IX, Section 3 of the Montana Constitution. Article IX, Section 3 states that all water within the State is owned by the State. The Compact does not give ownership of State water to the Tribes. Rather, the Compact is a negotiated settlement of water use. The State is obligated to follow federal law in recognizing the superior on-Reservation water rights of the Tribes. The Compact is designed to balance those interests with non-Tribal water use, and limit the Tribe's ability to call junior water rights.

The Compact, if approved by the Legislature, will also be in conformance with Article IX, Section 3's requirement to administer, control, and regulate water rights. Indeed, that is the Compact's very purpose.

Moreover, the Compact requires that all changes in water rights must be entered into the DNRC's "system of centralized records" that the Montana Legislature established pursuant to Article IX, Section 3(4).

# Most Frequently Asked Questions/Assertions by County & Local Governments

## The Compact may not be used as a vehicle to take irrigation project water rights or individual irrigators' water rights and transfer them to the Tribes.

**Response:** The assertion that the quantity of water allocated to the irrigation project is significantly less than historical use is not accurate, and the Compact gives irrigators water deliveries based on historic on-farm deliveries. Under the Compact, irrigation water will be provided to irrigators pursuant to a system of River Diversion Allowances that take into account transmission losses and inefficiencies between the river diversion point and the farm turnout. In response to concerns expressed in 2013 about the accuracy of the model used to set the River Diversion Allowances, the Compact now contains provisions for an evaluation process to adjust the River Diversion Allowances to assure irrigators get the water they have historically received.

## The unitary management (the Board) set up by the Law of Administration improperly removes involvement of the state water court in administration of water rights on the reservation, treats Montana citizens within the FIP differently than citizens elsewhere, and disproportionately favors tribal representatives as to review, adjudication and control of water rights on the reservation and directs appeals from Management Board decisions to an undefined court of competent jurisdiction.

**Response:** The Tribes have reserved water rights and treaty rights under both federal and state law. Those rights affect water rights arising under State law. In light of that, the question of who administers the water rights within the Reservation was one of the questions that had to be dealt with in the Compact. Montana's Compacts with some other Tribes have set up dual administration, with the Tribes administering tribal rights and the State administering state-based rights. Even with dual administration, the State wouldn't fully control administration of water rights within the Reservation.

In this Compact, the negotiated resolution sets up a unitary administration under a five-member Board with two members selected by the Tribal Council, two by the Governor, and the fifth by the four other appointees, or, in case of a deadlock, by the Chief Judge of the U.S. District Court for the District of Montana, a balanced and practical approach that does not disproportionately favor any interest. In setting up the unitary management system, the Commission ensured that the rules the unitary administrator (the Water Management Board set up by Article IV.I.) would have to apply would be both explicitly spelled out pursuant to the Compact, to avoid disparate treatment of any water users, and consistent with State water law except where specific departures from current State law were appropriate.

The Compact does define Court of Competent Jurisdiction, and in such a way that in event of disagreements by the litigants, the Court will end up being the United States District Court rather than a State Court or Tribal Court.

The alternative to the Compact solution of unitary management would be litigation in which a court would try to find a solution, but even the court would be constrained to recognize trial rights under applicable law, meaning the solution would not be for full State control over water rights within the Reservation.

# Most Frequently Asked Questions/Assertions by Legislators

## The Compact implies that project irrigators get less water than they have been getting and that it is reduced to 1.4 acre feet per year.

**Response:** The Compact does not say that project irrigators get less water than they have been getting, it gives them water based on historic on-farm deliveries. The 1.4 acre feet per acre provision has been removed from the Compact, one of the changes negotiated from the previous version. That provision has been replaced with provisions that irrigation water will be provided to irrigators pursuant to a system of River Diversion Allowances that take into account transmission losses and inefficiencies between the river diversion point and the farm turnout. In response to concerns expressed in 2013 about the accuracy of the model used to set the River Diversion Allowances, the Compact now contains provisions for a process to adjust the River Diversion Allowances to assure irrigators get the water they have historically received.

## With possible improvements to the irrigation ditches the Tribes get all the water savings.

**Response:** Under Article IV(C)(2) of the Compact, the water savings from improvements to the ditches (and other project facilities), referred to as Reallocated Water, is divided as equally as practicable between Instream Flow Rights and the Irrigation Project Water Right once the Tribes' instream flow rights are satisfied. This tiered system, which shares water savings once Target Instream Flows are achieved, takes into account that the Tribes agreed to defer the full implementation of their Instream Flow Rights in order to protect the ability of the project irrigators to receive historic farm deliveries, even though the 9th Circuit Court of Appeals rule in 1987 that the Tribes' instream flow rights are senior to the water rights associated with the Irrigation Project. The way it works is during the period in which operation and infrastructure improvements are being carried out to free up additional water to allow for both the Tribes' and project irrigators' water rights to be satisfied, the Tribes are agreeing to accept lower instream flows to ensure that project irrigator use is not displaced. So the first batch of water freed up by these improvements goes to the Tribes to allow them to achieve their full instream flow rights without impact to project irrigators, but once those rights are satisfied, any additional water savings are split equally.

## Improvements to the irrigation ditches may also harm the water table and reduce capacity of nearby water wells. Will these well owners be protected?

**Response:** Generally, under either State water law or the Compact, if the source of supply of a well is leakage from irrigation ditches, actions by the ditch owner to reduce leakage do not subject the ditch owner to liability. However, under the Adaptive Management provisions of the Compact, the Compact Implementation Technical Team can use excess interest payments from the pumping fund to mitigate ditch improvements which reduce well yields.

## Why are exempt wells being reduced from 35 gpm/10 acre feet to 35 gpm/2.4 acre feet?

**Response:** The 2.4 acre feet per year well limit was calculated, based on actual average use of exempt wells statewide, to be sufficient to provide ample water for a household including irrigation of .7 acres of land, and was put in place to avoid misuse of the exempt well category for non-domestic uses. This provision is the result of negotiations. At present there is no legal mechanism to recognize *any* new wells (whether above or below the 35 gpm/10 acre feet exemptions in State law) on the Reservation. In negotiating to obtain legal protection for those wells that have been drilled since 1996, the State had to come to an agreement with the Tribes over the size of the exemption going forward, and the 35 gpm/2.4 acre feet was the end result, representing a volume sufficient for domestic, household and residential irrigation purposes (.7 acres is the amount of defensible space recommended for buildings in the wildland-urban interface for fire prevention purposes). Without a Compact, any well drilled on the Reservation since August 22, 1996, does not have a legal water right under State law.

## Why are the Tribes getting Control of all the water west of the continental divide?

**Response:** They aren't, in fact the Compact doesn't even recognize a Tribal right to control all the water on the Reservation or even the Tribal exclusive control over the administration of their own water rights. There is a recognition of some limited off-reservation rights owned by the Tribes, but the nature of those rights combined with the protections built into the Compact and the shared management through the Water Management Board, means the Tribes will have less control over water in western Montana under the Compact than they could have with judicial recognition and enforcement of their claims.

## Why does the State have to pay $55 million when it is a federal irrigation project?

**Response:** The State is agreeing in the Compact to pay a total of $55 million – the majority of which ($30 million) is to assist with pumping costs for project irrigators. The remaining $15 million will be allocated as follows: $4 million for water measurement; $4 million for on-farm efficiency improvements on lands served by the project; $4 million for on-farm stock water systems; and, $13 million to the Tribes for aquatic and terrestrial habitat enhancement. The State is agreeing to make this contribution as part of the consideration for the various concessions the Tribes are making in the Compact. The State has made significant contributions to other Indian water rights settlements (such as the Blackfeet Tribe and Crow Tribe) as well. The State's contribution represents the value to the State of having a final determination of the Tribes' water rights and protection for existing State water uses.

The State is not the only one that will be making a monetary contribution towards settlement of the Tribes' water rights. The U.S. Government will also be required to contribute to the settlement of the Tribes water rights. Most estimate the federal contribution will exceed Congress' appropriation of $460 million in 2010 for settlement of the Crow Tribe's water rights.

# Why the Six Legislative Reasons to Reject the CSKT Water Compact are Incorrect.

## The Compact gives all surface and ground water within the borders of the reservation to the CSKT Tribal government, including water rights belonging to both non-Indian and Indian private landowners. No Tribe in Montana or the United States has been given all the water on a reservation.

**Response:** The Compact does not give all surface and ground water within the Reservation to the Tribes. Instead, as with all other Indian compacts in Montana, the CSKT Compact quantifies the Tribes' water rights. The CSKT Compact also provides for a system of shared administration for the use of water by Indian and non-Indian land owners within the Reservation. It does not transfer anyone's private water rights to the Tribes. Specifically, the claim of FIIP irrigators to ownership of the FIIP water right is unaltered by the Compact. It will move forward in the statewide water adjudication process for final resolution by the state water court.

## The CSKT Compact has never identified the quantity of water needed by the CSKT to fulfill the purposes of the Flathead Indian Reservation. How much do they need, what are the anticipated needs, looking down the road, what is the volume of water needed for future development of the Tribe on the Reservation?

**Response:** The Compact provides specific quantification of the Tribes' water rights, both on and off the reservation. In fact, through the abstracts appended to the Compact, the CSKT Compact quantifies the Tribes' rights with more specificity than any prior Indian water rights Compact in Montana. By agreeing to the Compact, the Tribes have agreed that the above specific quantification fulfills their present and future water needs. In exchange, they have agreed to relinquish their right to make any other claims to water within the State and to dismiss any pending claims on final approval of the Compact by the water court. The quantification is accomplished as follows:

i. The Tribes' consumptive use water right from Flathead system water is quantified in Article III.C.1.c., appendix 9. The Tribes have a diversion right in the amount of 229,383 acre-feet per year from Flathead Lake, the Flathead River, and the South Fork of the Flathead River. Water that may actually be depleted is limited to 128,158 acre-feet per year. Use of this water right must comply with various Endangered Species Act requirements, requirements for federal dams and reservoirs, and with filling criteria for Flathead Lake.

ii. The water right for the Flathead Indian Irrigation Project is quantified at Art. III.C.1.a., and appendices 3.2 through 3.7. The quantified water diverted into the Project is specified for each administrative area within the Irrigation Project, and varies depending on whether the water year is a wet, normal or dry year. These quantifications are termed River Diversion Allowances, or RDAs. The total RDAs for wet, normal, and dry years respectively are 302,250 acre-feet, 278,000 acre-feet, and 256,900 acre-feet. It is important to note that these numbers do not include pumped water available through the Flathead pumping station RDA, which is set at 65,000 acre-feet. This additional water is capable of being pumped directly or transported between administrative areas within the Mission and Jocko.

iii. The on-reservation instream river flow water right is quantified at Art. III.C.1.d., and appendices 10 through 14, and is measured in cubic feet per second at specific locations during specific times of the year. On-reservation instream flows were quantified, conditioned and/or located specifically to protect existing uses. For example, the natural instream flows have enforcement points located upstream of consumptive diversions, meaning they cannot be used to call other uses.

iv. The water right for "Other Instream Flows," is quantified at Art. III.C.1.d., appendix 12. These flow rates must accommodate existing uses. The "other" instream flows will not have an enforceable level set until after the adjudication is complete (although they are currently quantified), and that process for setting the enforceable level is 1) public and 2) requires it to be set to allow existing uses to continue. *See Unitary Management Ord. §* 2-1-115.

v. Other non-consumptive water uses within the reservation are quantified at Art.III.C.e – l, and accompanying appendices.

vi. The water right for off-reservation instream flows is quantified at Art. III.D and accompanying appendices.

## The "Abstracts of Water Right" are the defining and controlling documents for implementing the compact (Article III(B), page 14). There are 1,000-plus pages to read in order to know what is in the Compact and to find out how much water has been awarded to the Tribes.

**Response:** Abstracts are important, however, they are voluminous. Rather than reading the abstracts as a single comprehensive set of documents, they were intended to provide reference information linked to the water right descriptions in the Compact. The quantifications for the most substantial rights are either set forth in the Compact directly or in the non-abstract appendices (for the Flathead System Compact Water and the FIIP Water Use Right.)

## The Compact awards to the CSKT alone the equivalent of 40 feet of water on every acre of land within the 1.2 million acre reservation. This is more water awarded to a single tribe than all the water awarded to every Tribe in Montana and every Tribe in the United States combined.

**Response:** At the outset it is important to note that this statement does not include any information as to the methodology or source for its calculation as to the amount of water being awarded to the Tribes in the Compact, thus it is impossible to assess for accuracy. That being said, this assertion is simply incorrect. The actual quantification of the Tribes' water right as set forth in the Compact does not support the amount of water that this statement claims is being awarded to the Tribes. See previous response summarizing the specific quantification amount of the Tribes' water rights in the Compact. In order to get anywhere close to the amount of water contemplated in this statement one would likely have to conflate the Tribes' consumptive and non-consumptive water rights and add the non-consumptive rights in a way that results in a double-counting of water.

## This Compact would create the first-time ever off-reservation water right in Montana, taking the state water rights out of the hands of Montana and giving the control of state water over to the federal government.

**Response:** It is correct that the proposed water compact with CSKT is the only compact to include off-reservation water rights derived from treaty fishing rights. The reason for the inclusion of this type of off-reservation right is very straight forward – CSKT is the only Tribe in Montana to have entered into a "Stevens Treaty." Legal precedent has established that (1) Stevens Treaty Tribes, including the Hellgate Treaty of 1855, have off-reservation fishing rights; (2) these rights are substantive and continue to exist; (3) beneficial uses in Montana include instream flows for fisheries; and (4) a tribal reserved right for fishing includes the right to "prevent other appropriators from depleting the stream waters below a protected level in any area where the non-consumptive right applies." *State ex. rel. Greely v. Confederated Salish & Kootenai Tribes* (1985), 219 Mont. 76, 93. While it is true that a court has not yet adjudicated the precise issue of CSKT's off-reservation water rights as derived from the Hellgate Treaty, based on the language of existing legal precedent it is very likely that the Tribes' claims to off-reservation instream flow rights will be upheld by both federal and state courts. It is the very likelihood of such an outcome that necessitates the passage of a water compact addressing off-reservation rights.

The inclusion of off-reservation water rights in the Compact, however, does not result in the federal government having control over State water rights. Instead, the State, through negotiation, was able to limit the Tribes' ability to exercise the off-reservation water rights so as to preserve and protect existing water uses. Mere ownership of a water right off the reservation in no way conveys regulatory control to either the Tribes or the federal government. On the contrary, the state has direct jurisdiction over such rights, as it always has.

## The Compact will remove 28,000 Montana citizens' water rights out from underneath the protection of the Constitution and laws of the State, placing them under the jurisdiction of the CSKT. This has never been done before in the United States.

**Response:** The Compact does not remove Montana citizens from the laws of the State. Instead, the Compact provides for a new ordinance that will apply equally to both Indian and non-Indian water users on the Reservation, and that will be adopted in functionally identical form as both State law and Tribal law. In this Compact, the negotiated resolution sets up a unitary administration under a five-member Board with two members selected by the Tribal Council, two by the Governor, and the fifth by the four other appointees, or, in case of a deadlock, by the Chief Judge of the U.S. District Court for the District of Montana, a balanced and practical approach that does not disproportionately favor any interest. The board does not place water users "under the jurisdiction of the CSKT." Rather, it is a joint state-tribal board with equal representation, implementing an ordinance that will be part of State law. The ordinance is consistent with current State water law except where specific departures from current State law were appropriate. As the ordinance will need to be approved by the Montana legislature to become effective, it is entirely consistent with Article IX(3) of the Montana Constitution.

# Most Frequently Asked Questions/Assertions by Irrigators

## The irrigation water rights belong to the irrigators or the irrigation districts, not to the Tribes.

**Response:** Both the BIA and the Flathead Joint Board of Control (FJBC) filed claims in the Montana Water Court for the water historically used by FIIP irrigators. Applicable law does not clearly support the claim that these rights belong to the irrigators or to the irrigation districts, nor does it support a claim by the FJBC or fee land irrigators to an 1855 priority date, which is the date the Project right has under the Compact. This priority date is important because it means the Project won't be required to change from its historic practice of delivering water to lands based on quota rather than priority date. In the Compact, the State has made the decision to recognize these rights as part of the Tribal Water Rights in exchange for the Tribes' agreement to assure that the irrigators remain entitled to the right to use of water they have historically put to beneficial use. In addition, unlike the 2013 draft Water Use Agreement among the Tribes, the FJBC and the United States, the Compact does not call for or require the withdrawal of claims filed by the FJBC for the Project. Those claims remain to be resolved in the Adjudication by the State Water Court.

## The compact improperly converts the irrigators' property right in water use to a contract right.

**Response:** The status of the irrigators' rights to Project water is not at all settled under the law. While reasonable minds may differ over how a court might resolve this question (possibilities include personal water rights; delivery rights derived from the Project right; delivery rights derived from the federal rules and regulations governing the Project; contract rights, no legal entitlement to water at all), the Compact provides certainty by quantifying the Project right as part of the Tribal Water Right with an 1855 priority date while ensuring that irrigators' ability to continue to use their water is protected, and that their right to continue to use water is transferrable with the land.

## The Compact transforms federal reserved water rights under the Winters Doctrine into Indian reserved water rights, greatly expanding the scope of the permissible claims Indian Tribes can make under the Winters Doctrine.

**Response:** The Compact Commission made the determination, reflected in the Compact, that the tribes were entitled to at least the water rights allocated to the Tribes in the Compact. This determination was based on the fact that the controlling case law, including the controlling Montana Supreme Court case, *State ex rel. Greely v. Confederated Salish & Kootenai Tribes,* 219 Mont. 76, 99 (1985), does not support the sort of bright-line distinction between Winters Doctrine rights and Indian reserved water rights asserted in the question. There are no rights recognized in the Compact that fall outside the rights recognized by this case law, and the fact the Compact references language from the Treaty in the Recitals doesn't change the derivation or the legal significance of those rights.

## The Compact reduces the water historically available to irrigators will get from 4.7 acre feet per acre to 1.4 acre feet per acre.

**Response:** The assertion that irrigators historically received 4.7 acre feet per acre is not accurate, and the Compact does not limit irrigators' rights to 1.4 acre feet per acre. That provision was in the draft Water Use Agreement among the Flathead Joint Board of Control (FJBC), the Tribes and the United States that was intended to be an Appendix to the 2013 version of the Compact. The current Compact does not set a fixed quantity by farm turnout but instead uses River Diversion Allowances to satisfy the irrigation project water right and Historic Farm Deliveries that take into account transmission losses and inefficiencies between the river diversion point and the farm turnout to assure irrigators get the water they have historically needed to grow their crops. The Compact leaves distribution of the water up to the Project Operator and the project's operations plan, as it has always been. The relevant provisions in the Compact are found at Article IV.D.

## The Compact, through the RDA, further diminishes the 1.4 acre feet per acre because if 1.4 acre feet is made available from the river diversion, some of that is lost in transmission before it gets to the farm turnout.

**Response:** The Compact does not limit irrigators' quantity rights to 1.4 acre feet per acre per year per irrigable acre, and the current Compact language instead says that irrigation water will be provided to irrigators pursuant to a system of River Diversion Allowances, consistent with Historic Farm Deliveries, that take into account transmission losses and inefficiencies between the river diversion point and the farm turnout to assure irrigators get the water they historically have needed to grow their crops. The relevant provisions in the Compact are found at Article IV.D.

## The instream flow provisions improperly give the Tribes rights to control water resources on and off the Reservation, taking water from irrigators (by cutting the water available to the irrigator's right from 4.7 acre feet to 1.4 acre feet).

**Response:** In 1987, the Ninth Circuit Court of Appeals ruled that the Tribes' instream flow rights on the Flathead Indian Reservation were senior to any water right associated with the Project. The Compact seeks to lessen the potential severity of this ruling on Project water users by including provisions to ensure irrigators will get the water they historically received even while protecting instream flow rights. The Compact provisions addressing this subject are found in Article s IV.C through F and Appendix 3.5. The Compact does not limit irrigators' quantity rights to 1.4 acre feet per acre per year per irrigable acre, and the current Compact language instead says that irrigation water will be provided to irrigators pursuant to a system of River Diversion Allowances, consistent with Historic Farm Deliveries, that take into account transmission losses and inefficiencies between the river diversion point and the farm turnout to assure irrigators get the water they historically have needed to grow their crops. The relevant provisions in the Compact are found at Article IV.D.

**The instream flow provisions improperly give the Tribes rights to control water resources on and off the Reservation:**

**-by recognizing more than the minimum instream flows which is what Stevens Treaty court decisions have recognized;**

**-by recognizing the Tribes' rights to the water necessary to revitalize the pre-Treaty natural environment of the reservation, which fits neither within the Winters Doctrine nor the Treaty rights related to fishing;**

**-by elevating the Tribes' treaty rights related to right to fish in common with other citizens "of the Territory" fishing above the rights of non-Indians (which improperly gives Tribes control of nearly all the waters west of the Continental Divide).**

**Response:** The Compact Commission determined that the Tribes were entitled under the *Winters* Doctrine, the Hellgate Treaty, and pertinent judicial decisions, to at least the instream flow rights which are reflected in the Compact. In exchange for recognition of these rights in the Compact, the Tribes agreed to extensive provisions that limit or wholly eliminate the Tribes' ability to exercise these rights to the detriment of other water users. For example, in exchange for the recognition of these rights, the Tribes have agreed to waive any ability to enforce them against any non-irrigation water user and against small irrigators. In addition, even where irrigators could theoretically be called by the Tribes to satisfy their instream flow rights, the quantification of the rights and the baseline hydrology of the streams in question are such that the risk of a Tribal call is minimized. The Compact Commission made the determination that the balance of rights and protections achieved by the Compact was preferable to facing the risks of litigation, which could result in the outcome predicted by these questions (smaller or no instream flow rights, especially off the Reservation) but that could also lead to the recognition of senior tribal instream flow rights free to be exercised with no consideration or protection for junior water users. The relevant Compact provisions are at Article III.G.

**The Compact may not be used as a vehicle to take irrigation project water rights or individual irrigators' water rights and transfer them to the Tribes.**

**Response:** Both the BIA and the Flathead Joint Board of Control (FJBC) filed claims in the Montana Water Court for the water historically used by FIIP irrigators. Applicable law does not clearly support the claim that these rights belong to the irrigators or to the irrigation districts, nor does it support a claim by the FJBC or fee land irrigators to an 1855 priority date, which is the date the Project right has under the Compact and which eliminates the prospect of the Project needing to depart from historic practice by beginning to deliver water to lands based on priority date rather than quota. In the Compact, the State has made the decision to recognize these rights as part of the Tribal Water Right in exchange for the Tribes' agreement to assure that the irrigators remain entitled to the right to use of water they have historically put to beneficial use. In addition, unlike the 2013 draft Water Use Agreement among the Tribes, the Flathead Joint Board of Control and the United States, the Compact does not call for or require the withdrawal of the claims filed by the FJBC for the Project. Those claims remain to be resolved in the Adjudication.

PONDEROSA ADVISORS LLC

*energy agriculture water*

February 2, 2015

Senator Chas Vincent
Montana Senate
PO Box 200500
Helena, MT 59620-0500

Senator Vincent,

In response to recent questions regarding interpretation of water right abstracts, I am providing the attached article. This article is based upon my past experience as a Senior Water Master with the Montana Water Court, although it is not intended to speak for the Court or represent its opinion. The article references the Montana Claims Examination Manual, and includes discussion of the elements of water rights as shown on water right abstracts, with examples of each field.

I am available to answer any questions or to provide additional information.

Sincerely,

Colleen Coyle
Director, Water Services
ccoyle@ponderosa-advisors.com

## Process and Implications of Adjudication through Litigation of CSKT Reserved Water Right Claims vs. Legislative Approval of a Compact

Colleen Coyle[1]

On December 10, 2014, the Confederated Salish and Kootenai Tribes (CSKT), the Montana Reserved Water Rights Compact Commission (RWRCC), and the United States reached agreement on a revised compact for CSKT reserved water rights. With approval by the RWRCC, the revised compact will be introduced at the 2015 Montana Legislature. This is the second time that the Montana Legislature will be considering a CSKT compact, having rejected the previous version during the 2013 session. This compact process has attracted national attention, including a New York Times article with this description of the 2013 version:

> The proposed compact is 1,400 pages long, a decade in the making and bewilderingly complex. Essentially, it helps to lay out the water rights of the tribe[s] and water users like farmers and ranchers. It provides $55 million in state money to upgrade the reservation's water systems. And it settles questions about water claims that go back to 1855, when the government guaranteed the tribes' wide-reaching fishing rights across much of western Montana. Healy, Water Rights Tear at Indian Reservation, New York Times, April 22, 2013.

At least four lawsuits in different state and federal jurisdictions have already been filed over claims to water related to the CSKT reservation. Opinions differ on how best to quantify the CSKT reserved water rights. Some who oppose the revised Compact have indicated support for adjudication through litigation of the CSKT

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[1] Colleen Coyle serves as Director, Water Services for Ponderosa Advisors LLC, the creators of Water Sage™ interactive technology for land and water rights in Western states. She previously served as a Senior Water Master with the Montana Water Court. She can be reached at ccoyle@ponderosa-advisors.com.

The opinions expressed in this article are solely the author's, and are not intended to represent those of the Montana Water Court or Ponderosa Advisors LLC.

water rights. This article summarizes the adjudication process as it generally applies to CSKT and state-based water rights.

The United States began litigating Indian water rights for Montana tribes when it filed two lawsuits in 1975 on behalf of the Northern Cheyenne and Crow Tribes and and two lawsuits in 1979 on behalf of the Fort Peck tribes in federal court. See Folk-Williams, The Use of Negotiated Agreements to Resolve Water Disputes Involving Indian Rights, 28 Nat. Res. J. 63, 82 (1988). In 1979, Congressional hearings recorded widespread concern by non-Indians about the consequences of this litigation. Id, citing Senate Select Committee on Indian Affairs, Indian Water Rights in Montana (1979). In 1979, largely because of the federal lawsuits, the Montana Legislature enacted the statewide water rights adjudication effort.

In Montana's adjudication process, statements of claim for all state-based water rights (rights other than federal and Indian reserved water rights) were required to be filed by April 30, 1982. Late claims were allowed until 1996. Late claims are subordinate to reserved water rights and sometimes to timely filed claims. Section 85-2-221, MCA. Indian reserved water rights did not need to be filed in 1982 if the tribes agreed to negotiate the rights with the Montana Reserved Water Rights Compact Commission. Compacts reached through the Compact Commission are required to be approved by the Montana Water Court. Section 85-2-217, MCA.

When the Montana Water Court approved the legislative approved Compacts of the Fort Peck and Rocky Boy Reservations in 2001 and 2002, Judge Loble concluded:

> All negotiations and adjudications quantifying Indian reserved water rights involve extensive and complex disputed issues of fact and law. They inherently involve competing interests in a scarce resource, the allocation of which must be determined by ambiguous, perhaps anachronistic law, evolving governmental policies, and increasingly sophisticated science—all amidst rapidly changing circumstances, within the confines of a complex adjudication process. That is precisely the incentive for negotiation and settlement of complex water right adjudications. Memorandum Opinion, Case WC 92-1 (2001).

If the CSKT Compact is not approved by the Legislature, then all CSKT Indian reserved water right claims must be filed with the Montana Department of Natural Resources and Conservation (DNRC) by July 1, 2015. These new filings must be given treatment similar to that given all other filings. Section 85-2-702(3), MCA.

**Differences between state-based and federal rights for adjudication, and some rules that would apply in adjudication**

Indian reserved water rights were first recognized by the United States Supreme Court in a case regarding the Fort Belknap Indian Reservation in northern Montana, Winters v. United States, 207 U.S. 564 (1908). Recognizing that the "lands were arid, and, without irrigation, were practically valueless," the Court concluded that Congress, by creating the Indian reservation, impliedly reserved not only land, but all of the waters of the Milk River necessary for the purposes for which the reservation was created. 207 U.S. 564, 567 (1908).

In Cappaert v. United States, the United States Supreme Court summarized the federal reserved water rights doctrine as follows:

> When the Federal Government withdraws its land from the public domain and reserves it for a federal purpose, the Government, by implication, reserves appurtenant water then unappropriated to the extent needed to accomplish the purpose of the reservation. In so doing the United States acquires a reserved right in unappropriated water which vests on the date of the reservation and is superior to the rights of future appropriators.

Cappaert v. United States, 426 U.S. 128 (1976).

In 1985, the Montana Supreme Court directed the Water Court to adjudicate reserved water rights in accordance with State ex rel. Greely v. The Confederated Salish and Kootenai Tribes of the Flathead Reservation, 214 Mont. 143,691 P.2d 833 (1985). In that opinion, the Montana Supreme Court described the holdings of several federal court decisions and provided the following summary:

- State appropriative water rights and Indian reserved water rights differ in origin and definition.
- Appropriative rights are based on actual use. Appropriation for beneficial use is governed by state law.
- Reserved water rights are established by reference to the purposes of the reservation rather than to actual, present use of the water. The basis for an Indian reserved water right is the treaty, federal statute or executive order setting aside the reservation. Treaty interpretation and statutory construction are governed by federal Indian law.

- The date of priority of an Indian reserved water right depends upon the nature and purpose of the right.
- Reserved water rights are difficult to quantify. Because the purposes of each reservation differ, federal courts have devised several general quantification standards. These standards differ depending upon the purpose for which the water was reserved.
- For agricultural purposes, the reserved right is a right to sufficient water to "irrigate all the practicably irrigable acreage on the reservation."
- The right to water reserved to preserve tribal hunting and fishing rights is unusual in that it is non-consumptive. A reserved right for hunting and fishing purposes "consists of the right to prevent other appropriators from depleting the stream waters below a protected level in any area where the non-consumptive right applies." Greely, 214 Mont. 143,691 P.2d 833.

Many aspects of these rules and decisions are ambiguous and thus it is difficult to predict the outcome of their application to CSKT water rights in litigation. For example, the Winters Court held that reserved water on the Fort Belknap Reservation could be beneficially used for "acts of civilization" as well as for agricultural purposes. Winters v. United States, 207 U.S. 564 (1908). "Acts of civilization" could be found to include a variety of uses, including consumptive uses for industrial purposes. Also, reserved rights may reflect future need as well as present use. Most reservations have used only a fraction of their reserved water, but the "practically irrigable acreage" standard applies to future irrigation of reservation land, not present irrigation practices and current consumptive uses. Winters rights are not subject to abandonment. See Arizona v. California, 373 U.S. 573, 577 (1963).

The Montana Water Court has recognized that "[w]hether by adjudication or by negotiation, determining the scope and extent of Indian reserved water rights has proved difficult at best." Memorandum Opinion, Case WC 92-1 (2001). This case discusses several of the Supreme Court decisions, stating that:

> As articulated by the United States Supreme Court, the Reserved Water Rights Doctrine is vague and open-ended and has been construed both broadly and narrowly by subsequent federal and state courts. *After nearly one hundred years of legislation, litigation, and policy making, there are still*

*no bright lines clearly and consistently delineating the Doctrine. Most of the legal issues inherent in the Doctrine remain unsettled and hotly debated and are now complicated by decades of distrust and competing policies.*

Memorandum Opinion, Case WC 92-1 (2001) (Italics mine).

**All statements of claim are prima facie proof of their content in Montana. This legal standard did not apply to Indian reserved water rights litigation in Wyoming.**

Claims for all existing (pre-July 1, 1973) water rights were required to be filed by April 30, 1982, and late claims were accepted for filing until 1996. Section 85-2-221, MCA. These deadlines were suspended only for federal and Indian reserved water rights during the compact negotiation process. Section 85-2-217, MCA. Some rights, such as instream stock and domestic rights, were exempt from the claim filing process. Section 85-2-222, MCA. Claims for existing rights can no longer be filed, because the deadlines have passed for all claims other than any remaining federal and Indian reserved rights that are not resolved through compacts, and processes for exempt rights pursuant to Section 85-2-222, MCA.

All statements of claim, for state-based claims and federal and Indian reserved rights, are prima facie proof of their content. Section 85-2-227(1), MCA. Objectors have the burden of producing evidence that contradicts and overcomes elements of the prima facie claim. Memorandum Opinion, Water Court Case 40G-2, p. 13 (March 11, 1997). This is the burden of proof for every assertion that a claim is incorrect, including for claimants objecting to their own claims. Rule 19, Water Right Adjudication Rules (W.R.Adj.R.)

This prima facie standard for water rights is not a feature of law in all Western states and was not the legal standard in Montana prior to 1979. Prior to 1979, any party asserting a water right in Montana had the burden of proving every element of their water right claim. See Case 40G-2. Recognizing the evidentiary difficulty in proving up elements of historical water rights when all witnesses to the original appropriations have long since died, and the need to speed up the process, the 1979 Legislature enacted the prima facie proof statute. Section 85-2-227, MCA.

In Montana, this prima facie standard would apply to CSKT claims just like any other claims in the adjudication process, so any objectors would have the burden to attempt to contradict or overcome elements of CSKT claims. This makes comparisons or predictions based on Indian reserved water rights litigation in other states very difficult. For example, in Wyoming, the Wind River Reservation Tribes and the United States were required to substantiate their claims to reserved water

rights, and the State of Wyoming served as an opposing party in the litigation. See Wyoming v. United States, 492 U.S. 406 (1989), reh'g denied, 492 U.S. 938 (1989) [Big Horn I ].

This structure is very different in Montana. In Montana, unless DNRC places issue remarks on claims (see below discussion on issue remarks), the Court reviews claims pursuant to Rule 8, W.R.Adj.R, or objectors actively oppose claims through the objection process, the prima facie standard can result in claims proceeding through adjudication unchallenged. The final decree can then reflect the claims as they originally appeared on the statements of claim. Objectors must actively participate in adjudication proceedings in order to maintain an objection. If an objector fails to appear at a scheduled conference or hearing, or fails to comply with an order issued by the Water Court, the Water Court may issue orders of sanction including dismissal of the objection. Rule 22, W.R.Adj.R.

**Adjudication Process**

The adjudication process for any basin decree begins with DNRC examination of all claims filed in the basin, using a detailed claims examination manual and a set of claims examination rules adopted by the Montana Supreme Court. This examination reviews claims for factual discrepancies and issues, such as whether acreage claimed appears to be irrigated in historical aerial photos, whether claimed acreage can be reached by claimed ditches or diversions, questionable flow rates and volumes, legal description errors, duplicate claims, questionable priority dates, and a wide variety of other discrepancies. DNRC contacts claimants to attempt to resolve issues that it identifies, and issues that remain unresolved are written on the claim abstracts as issue remarks. Many of the objections filed in recently issued basins are based on the DNRC issue remarks. The Water Court resolves issue remarks pursuant to Section 85-2-248, MCA, so claims examination is a significant component of the current adjudication process.

The claims examination rules do not provide procedures to examine federal and Indian reserved water right claims, and it is not clear whether these claims would be examined by DNRC. CSKT could object to examination of its claims, so litigation on this issue is likely. If examination is ordered, the Montana Supreme Court would most likely be asked to issue new claims examination rules to govern that examination process. If the claims are not examined, objectors will not be able to rely upon DNRC issue remarks to assist in identifying factual discrepancies. If claims examination is ordered, it is not possible to estimate how long any DNRC examination of CSKT claims would take because all claims are not yet filed, and

any litigation over this issue would delay examination. The claims examination process can generally take a year or longer in a basin, but with litigation and possible new rules for examination, it could take DNRC several years to complete an examination process for CSKT water right claims.

After examination, the Water Court issues the basin decree. Unlike traditional District Court cases where a decree is issued at the end of litigation, a Water Court decree is issued at the beginning of the litigation process. The Water Court decree is basically a compilation of water right abstracts for claims filed in a basin. Parties receive notice of the decree, have an opportunity to object to claims in the decree, and the decree is then modified after hearings, objections, and settlements. The Water Court provides notice that a decree has been issued and that it is available for review, and the time period for filing objections begins. The objection period lasts at least 6 months and is commonly extended. Deadlines for counter objections and notice of intent to appear are set, and once all deadlines have passed the Court will begin to consolidate cases. This is generally about 2 years after issuance of the decree.

The Water Judges refer many of the cases to Water Masters, who manage the cases through resolution by settlement or hearing. Masters set orders for conferences, manage settlement and prehearing deadlines, order field investigations, manage discovery processes, accept or reject settlement agreements, and issue decisions on motions. If parties are not able to reach settlement, Water Masters conduct hearings and issue decisions in the form of Master's Reports with findings of fact, conclusions of law and recommendations. Parties can object to Master's Reports, and Master's Reports can be accepted, rejected, or modified by the Water Judges. Rule 23, W.R.Adj.R. Water Judges will often hold additional proceedings, including hearings, at the request of a party in review of an objection to a Master's Report.

Currently, the average basin takes at least 5 years to be 90% complete. The remaining 10% are generally the most contentious cases in the basin, which could take several more years to complete. See Montana Water Court website, http://courts.mt.gov/water/water_court_statistics.mcpx.

The CSKT claims, if they are required to be filed, will present substantially different procedural and legal issues than any the Water Court has previously addressed due to the application of federal reserved water rights doctrine.

Adjudication of the CSKT reserved water rights through the claims filing, objection, and litigation process will involve not only the basins where the reservation is

located, but a likely reopening of other basins to address claims for aboriginal rights which CSKT has indicated it will file in several off-reservation basins. CSKT has asserted that its aboriginal range may include most of Montana west of Billings and Lewistown. If CSKT claims are filed in off-reservation basins, then it might also result in litigation and reopening of litigation for state-based rights in those same off-reservation basins.

Consequently, the basins where CSKT claims are filed, including Basin 76L (Flathead River below Flathead Lake) and Basin 76LJ (Flathead River to and including Flathead Lake) will take longer to complete than the average for basins. The basins where aboriginal claims are filed, off the reservation, are also quite likely to take longer than average. No one can estimate the length of time it will take to adjudicate these claims, and appeals to state and federal courts are far more likely than with any other litigation the Water Court has addressed, including the potential for appeals to the United States Supreme Court. The United States Supreme Court has reserved the right to review state court adjudications of Indian reserved water rights, which the Montana Supreme Court has directly acknowledged. State ex rel. Greely v. Confed. Salish & Kootenai Tribes, 219 Mont. 76, 95 (1985). In the San Carlos Apache case, the U.S. Supreme Court emphasized:

> "[O]ur decision in no way changes the substantive law by which Indians rights in state water adjudications must be judged. State courts, as much as federal courts, have a solemn obligation to follow federal law. Moreover, any state-court decision alleged to abridge Indian water rights protected by federal law can expect to receive, if brought for review before this Court, a *particularized and exacting scrutiny commensurate with the powerful federal interest in safeguarding those rights from state encroachment*." 463 U.S. at 571, 103 S.Ct. at 3216. (Emphasis mine).

If the CSKT Compact is approved by the Legislature, it will be subject to Congressional, Tribal, and Water Court approval. Preliminary decrees will be issued incorporating the Compact and state based claims. The Compact could be included in a Preliminary Decree with all the state law based claims filed in the Flathead Valley basins. Alternatively, the state based water right claims of the Flathead Valley basins could be issued in a separate Preliminary Decree while the CSKT Compact is reviewed by Congress. If Congress and the President approve the Compact, the Compact would then be filed with the Water Court for approval or rejection. The Water Court reviews Compacts to determine if they are "fundamentally fair, adequate and reasonable", and to determine whether they

conform to applicable law. Case WC 2007-03. The Water Court cannot modify a compact. It can only approve or reject compacts.

Because predicting a final outcome of the claim filing, objection, and litigation process is so difficult, there are significant benefits to negotiating water right settlements. Settlements can address issues such as water administration and funding, but a Water Court decision, issued after the claims are filed and all objections are litigated to finality, would set forth only the findings of fact, conclusions of law, and elements of water rights as dictated by Section 85-2-234, MCA. The Water Court has recognized that a water right decision litigated through the objection process is less flexible than a negotiated compact settlement:

> The parties to this Compact, and the negotiators to compacts generally enjoy considerable freedom in reaching the compacted results, and may achieve results through the compact process that are more favorable to their interests than would be achieved through litigation. If other parties claiming reserved water rights proceed to litigation on the merits before the Montana Water Court, the Court will have to draw hard lines and resolve ambiguous legal precedent on many of the issues which are given broad brush in this Compact review. Case WC 92-1.

<u>Conclusion</u>

The Montana Water Court and the adjudication staff at DNRC have outstanding expertise and procedures in place to adjudicate state based rights, and also federal and Indian reserved water rights if compact efforts fail. If CSKT water rights are litigated in Montana's general statewide stream adjudication, the Montana Water Court will be faced with the most complex, most contentious litigation it has encountered to date. The water rights adjudication process in Montana has currently been proceeding for over thirty years, and has cost nearly ninety million dollars in state funding so far, not counting expenses by litigants including federal agencies, local governments, and individual water users. Many commenters before the Montana Water Policy Interim Committee express an interest in seeing an expedited completion of the adjudication process, and benchmarks and funding have been incorporated into the process to speed its conclusion. A recent legislative audit predicted that the adjudication may be completed by 2028, but that prediction assumed Montana would successfully negotiate compacts for federal and Indian reserved water rights. June 2010 Performance Audit Report to the Montana Legislature. If the CSKT water right claims are required to be adjudicated through the objection and litigation process, the only certainty will be that Montana water

rights will remain unsettled for much longer than any previous estimates could predict.

# ATTORNEY GENERAL
## STATE OF MONTANA

Tim Fox
Attorney General

Department of Justice
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TO: Tim Fox, Attorney General

FROM: Dale Schowengerdt, State Solicitor

RE: Constitutionality of the CSKT Water Compact

DATE: January 30, 2015

## I. THE CSKT WATER COMPACT IS NOT A TAKING UNDER THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

**Brief Answer:**

It is very unlikely that a court would consider the Compact to be a taking under the Fifth Amendment because it does not take title from any property owners. The Compact is explicit: "Nothing in this compact shall be construed or interpreted . . . [t]o transfer, convert, or otherwise change the ownership or trust/fee status of land on the Reservation. Specifically, nothing in this Compact changes fee owned land to trust land or trust land to fee land, or in any way alters the ownership status of land within the exterior boundaries of the Flathead Indian Reservation." January 12, 2015 Proposed Compact, Article V(B)(24), p. 58. Moreover, while the Compact does provide for a prioritization and regulated distribution of water on the Reservation, that does not make it a taking under the Fifth Amendment because it does not render non-Tribal water users' rights economically valueless. In fact, in many ways the Compact adds value and stability to existing water use claims by limiting the Tribes' ability to call junior water rights. Arguments that the Compact is a taking appear to be based on either a misunderstanding of what constitutes a taking under the Fifth Amendment or, perhaps more likely, a misunderstanding as to what the Compact actually does.

**Analysis:**

Some have questioned whether the CSKT Water Compact constitutes a Fifth Amendment "taking" of property of non-Tribal users/owners on the Flathead Irrigation Project. The arguments appear to be that the Compact is a taking because it (1) somehow transfers non-Tribal irrigators' water rights to the Tribes, (2) makes non-Tribal junior users' water rights subordinate to senior Tribal water rights, and (3) submits non-Tribal rights to Tribal regulatory authority.

First, it's important to briefly outline Supreme Court precedent on Fifth Amendment takings. The most obvious takings claim is if the government actually takes title of private property, which is known as a "physical taking." If the government takes an interest in property for some public purpose, it must compensate the former owner. *Tahoe-Sierra Pres. Council v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 322 (2002). This category of taking only comes into play if the government is actually taking title to the property. *Id.*

Although some opponents have made vague claims that the Compact removes title from non-Tribal water users and gives it to the Tribes, those claims are in error. Indeed, the Compact confirms that nothing in it can be construed to "transfer, convert, or otherwise change the ownership or trust/fee status of land on the Reservation." January 12, 2015 Proposed Compact, Article V(B)(24), p. 58. The Supreme Court precedent on physical takings is a bright line standard that is easy to apply here. Clearly, the Compact does not result in a transfer of title, and thus there is no physical taking under the Fifth Amendment.

The second type of taking that the Supreme Court has identified is a "regulatory taking." This is likely what proponents of this argument mean when they claim that the Compact is a taking. The argument is that by subordinating non-Tribal water rights to senior Tribal water rights and by submitting those water rights to Tribal regulatory authority, the government has deprived non-Tribal water users of an interest in their property.

Supreme Court precedent makes regulatory takings claims extraordinarily difficult to maintain. Compensation is required only if a law or regulation "deprives an owner of '*all* economically beneficial uses' of his land." *Tahoe-Sierra*, 535 U.S. at 330 (quoting *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1019 (1992)). Regulatory takings are limited to "the extraordinary circumstance when *no* productive or economically beneficial use of land is permitted." *Id.* (emphasis in original); *see also Kafka v. Mont. Dep't of Fish, Wilflife & Parks*, 2008 MT 460, 348 Mont. 80, 201 P.3d 8 (law that substantially decreased profitability of land did not constitute a taking).

There is simply no argument that the Compact deprives non-Tribal property owners of *all* economically beneficial uses. No state law-based water rights are being eliminated through the Compact.[1] Rather, the Compact quantifies the Tribes' water rights, whose priority dates are – as a matter of federal law – senior to state law-based water rights on the reservation. This is consistent with Montana's prior appropriation doctrine. Thus, there is no regulatory taking.

In fact, the opposite is arguably true because the Compact imposes conditions on the Tribes' senior water rights in favor of junior users. The Compact is a legally binding allocation of water between tribal instream flows and project uses that is designed to keep water available for project irrigators despite the junior priority date of the irrigation project's water rights in relation to the Tribes' instream flow rights. *See Joint Bd. of Control v. United States*, 832 F.2d 1127 (9th Cir. 1987) (noting that the Tribe's "priority date of time immemorial obviously predates all competing rights asserted by the Joint Board for the irrigators" and that absent a binding agreement the Tribe's aboriginal water rights can "prevent other appropriators from depleting the streams waters below a protected level.") (quoting *Colville Confederated Tribes v. Walton*, 752 F.2d 397, 405 (9th Cir. 1985)). Moreover, part of the bargain is that the Tribe will limit its rights to make a call on existing irrigation rights on the reservation, and relinquish its right to make a call on irrigation rights off the reservation. Without the Compact, the Tribe would reserve their right to call water claims far and wide. In this way, the Compact adds value to existing non-Tribal water rights by providing stability to those claims.

In any event, it seems implausible that the courts would determine that the Compact constitute a taking under the Fifth Amendment.

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[1] Although the State does not believe that the 2013 draft Water Use Agreement among the Tribes, the Flathead Joint Board of Control ("FJBC") and the United States constituted a taking, the current Compact does not call for or require the withdrawal of the claims filed by the FJBC for the Project. Those claims remain to be resolved in the Adjudication.

## II. THE COMPACT DOES NOT VIOLATE EQUAL PROTECTION BY TREATING OFF-RESERVATION WATER USERS DIFFERENTLY THAN ON-RESERVATION WATER USERS.

**Brief Answer:**

The Compact does not violate Equal Protection by treating non-Tribal water users on the Reservation differently than water users in other parts of the state. Non-Tribal water users on the Reservation are not similarly situated with water users in the rest of the State because of the unique water rights that the Tribes have under federal law. The State is not free to disregard the Tribes' superior water rights on the Reservation, and that naturally has implications for non-Tribal water users living on the Reservation. Thus, the Montana Supreme Court and the United States Supreme Court have recognized that it does not violate equal protection to treat tribal members differently when doing so is "rationally tied to the fulfillment of the unique obligation" to Indians that is created by federal law. *State v. Shook*, 2002 MT 347, 313 Mont. 347, 67 P.3d 863; *Morton v. Manacari*, 417 U.S. 535, 555 (1974). In short, even if the Compact is viewed as treating water users differently, those distinctions are based on federally defined Indian reserved rights that the State is required to recognize and administer.

**Analysis:**

One argument against the Compact is that it violates the Equal Protection guarantees of the U.S. and Montana constitutions. The argument apparently rests on the premise that the Compact treats non-Tribal water users on the Reservation different from non-Tribal water users in other parts of the State. But even if that is true, it is not enough to prove a violation of equal protection.

Equal protection under both the state and federal constitutions follows a similar analysis. "The basic rule of equal protection is that persons similarly situated with respect to a legitimate governmental purpose of the law must receive like treatment." *Rausch v. State Compen. Ins. Fund*, 2005 MT 140, ¶ 18, 327 Mont. 272, 114 P.3d 192; *Carpinteria Valley Farms, Ltd v. County of Santa Barbara*, 344 F.3d 822 (9th Cir. 2003). Courts recognize that virtually all laws draw distinctions between classes. That is not what Equal Protection prohibits. So long as the distinctions are justified by a sufficient purpose, equal protection is not offended simply because a law makes distinctions. *Henry v. State Compen. Ins. Fund*, 1999 MT 126, ¶ 27, 294 Mont. 449, 982 P.2d 456.

Here, it is doubtful that non-Tribal water users on the Reservation are similarly situated with non-Tribal water users in the rest of the state. Property on the Reservation is subject to special rules derived from the unique federal status of the Tribes. Non-Tribal citizens moving to the Reservation should know that when they live within the boundaries of the Reservation, they might be subject to different rules that may not otherwise apply if they lived off the Reservation, especially on issues surrounding water use.

In fact, the Montana Supreme Court has not only allowed different treatment of non-Tribal members on the Reservation than non-Tribal members in the rest of the state, it has mandated it in certain contexts. In 1996, the Court prohibited the Department of Natural Resources and Conservation ("DNRC") from issuing any new non-Tribal water permits to landowners on the Reservation until the Tribes' water use rights are quantified. *In the Matter of Beneficial Water Use Permit,* 278 Mont. 50, 61, 923 P.2d 1073, 1080 (1996). The Court noted that it "has long recognized a distinction between state appropriative water rights and Indian reserved water rights," and that the "Montana Water Use Act, our prior decision in *Greely*, and the decisions of the federal courts make it clear that an applicant for a permit to use water within the exterior boundaries of the Flathead Reservation must prove that his proposed use does not unreasonably interfere with the Tribes' reserved water rights." *Id.* at 56, 61, citing *State ex. rel.*

*Greely v. Confederated Salish & Kootenai Tribes* 219 Mont. 76, 712 P.2d 754(1985). In other words, non-Tribal water users on the Reservation are subject to different rules than non-Tribal water users off the Reservation because they are not, as a matter of law, similarly situated.

Moreover, even if similarly situated, differing treatment between those classes does not violate Equal Protection. The Compact's recognition of the Tribe's superior water rights and its establishment of the Water Management Board is based on the Tribes' unique water use rights under federal law. This is nothing new. Indeed, the Montana Supreme Court has recognized "the distinctions between federal reserved water rights, Indian reserved water rights, and state appropriative use rights and the manner in which the Water Use Act permits each different class of water rights to be treated differently." *Greely*, 219 Mont. at 99, 712 P.2d at 768.

In *Greely* the Montana Supreme Court reiterated that Indian reserved water rights are very broad and are much different than typical water rights in several respects. For example, beyond the Tribe's superior priority date, it is also clear that Indian reserved water rights may include *future* uses, not simply beneficial past use. *Greely*, 219 Mont. at 93-94, 712 P.2d at 765; *see also id.* 219 Mont. at 95-98, 712 P.2d at 765-767 (discussing distinctive features of Indian reserved water rights and noting that the purposes of those rights "are given broad interpretation in order to further the federal goal of Indian self-sufficiency").

Because federal law requires those distinctive features of Indian water rights, the State is not free to disregard them. Thus, the Montana Supreme Court and the United States Supreme Court have affirmed that it does not violate equal protection to treat tribal members differently when doing so is "rationally tied to the fulfillment of the unique obligation" to Indians that is created by federal law. *Shook*, ¶¶ 352-53 (holding that hunting classifications based on tribal membership did not violate equal protection); *see also Morton v. Mancari*, 417 U.S. 535, 552 (1974) (holding that employment preferences for Indians did not violate equal protection). Thus, someone living on the Reservation should not be surprised that they may be subject to different rules than non-Indian water users off the Reservation.

In sum, even if the Compact is viewed as treating water users differently, those distinctions are based on federally defined Indian reserved rights that the state recognizes and administers pursuant to federal law. Non-Tribal water users within the boundary of the Reservation will necessarily be subject to different rules than water users in the rest of the state. Those distinctions, even if considered relevant to an equal protection challenge, would satisfy scrutiny under the state and federal constitutions.

## III. THE COMPACT DOES NOT VIOLATE ARTICLE IX, SECTION 3 OF THE MONTANA CONSTITUTION.

**Brief Answer:**

Article IX, section 3 states that all water within the State is owned by the State. The Compact does not give ownership of State water to the Tribes. Rather, the Compact is a negotiated settlement of water *use*. The State is obligated to follow federal law in recognizing the superior on-Reservation water rights of the Tribes. The Compact is designed to balance those interests with non-Tribal water use, and limit the Tribe's ability to call junior water rights.

The Compact, if approved by the Legislature, will also be in conformance with Article IX, section 3's requirement to administer, control, and regulate water rights. Indeed, that is the Compact's very purpose.

Moreover, the Compact requires that all changes in water rights must be entered into the DNRC's "system of centralized records" that the Montana Legislature established pursuant to Article IX, section 3(4).

**Analysis:**

Under Article IX, section 3, the State owns all the water within the State. The Compact does not (and could not) alter that. Rather, the Compact is a negotiated settlement of water use rights, not water ownership.

Water rights in Montana are based on a system of prior appropriation, which means that water rights have priority dates. Senior water users with an earlier priority date are entitled to use the last drop of their water rights before junior water users are entitled to the first drop of theirs. Under this system, the water user with the most senior priority date may call a junior user, and the junior user may be forced to curtail water use until the senior user's right is satisfied.

Courts have already determined that the Tribes have a priority date of time immemorial for inflow stream rights, and an 1855 priority date for other on-Reservation water rights. *Joint Board of Control of Flathead, Mission and Jocko Irrigation Districts v. U.S.*, 832 F.2d 1127, 1132 (9th Cir. 1987). Further, the Montana Supreme Court described the distinction between State appropriated and Indian reserved water rights in *Greely*:

> State appropriative water rights and Indian reserved water rights differ in origin and definition. State-created water rights are defined and governed by state law. (citing Art. IX, section 3). Indian reserved water rights are created or recognized by federal treaty, federal statutes or executive order, and are governed by federal law.
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> ***
>
> The United States is not the owner of Indian reserved rights. It is a trustee for the benefit of the Indians. . . .Indian reserved water rights are "owned" by the Indians.

Greely, 219 Mont. at 89-90, 712 P.2d at 762. The Court also noted that Indian reserved water rights are broadly construed under federal law. *Id.* The United States Supreme Court has also recognized that "[t]he power of the government to reserve the waters and exempt them from appropriation under state laws is not denied, and could not be." *Winters v. U.S.*, 207 U.S. 564, 600-01 (1908).

The Tribes and the State, however, do have authority to negotiate and agree "upon the extent of the reserved water rights of each tribe. In order to be binding, a negotiated compact between the State and tribe must be ratified by the Montana legislature and the tribe." *Greely*, 219 Mont. at 91, 712 P.2d at 763. That is precisely what the CSKT Compact aims to do. Consistent with Article IX, section 3, the Compact does not cede ownership of State water. Instead, it is designed to provide a negotiated settlement of competing water use claims in a manner that ensures continued use by non-Tribal water users. Without the Compact, those claims will only be settled by litigation.

One other minor point is often raised that the Compact somehow violates the requirement in Article IX, section 3(4) that "[t]he legislature shall provide for the administration, control, and regulation of water rights and shall establish a system of centralized records, in addition to the present system of local records." The Compact, however, does not relinquish the State's duty regarding this provision.

First, the Constitution does not delineate how the State is to accomplish the objective to administer, control, and regulate the State's water rights. Indeed, the Legislature has broad authority to do so, especially when laws are "rationally tied to the fulfillment of the unique obligations toward Indians". *Shook*, ¶¶ 352-53. Thus, if the Montana Legislature approves the Compact, including its unitary administration framework, it is acting in furtherance of its obligation to administer, control, and regulate water rights, not in violation of it.

Moreover, the proposed Compact specifically requires that the Water Management Board enter any water rights or change authorizations it approves into the DNRC water rights database, which is of course the "system of centralized records" that the Montana Legislature established pursuant to Article IX, section 3(4).

In sum, it is unlikely that a court would find that the Compact violates Article IX, section 3 given the well-established precedent concerning Indian reserved water rights and the deference afforded the Legislature in complying with its federally-mandated obligations toward the Tribes.

# RESERVED WATER RIGHTS COMPACT COMMISSION

STEVE BULLOCK, GOVERNOR

CHRIS D. TWEETEN, CHAIRMAN

## STATE OF MONTANA

Senator Debby Barrett
Dorothy Bradley
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Rep. Daniel Salomon

Senator Dick Barrett
Mark DeBruyker
Richard Kirn
Rep. Kathleen Williams

February 2, 2015

Senator Chas Vincent
Montana Senate
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Dear Senator Vincent,

You have asked me to respond to assertions made in a letter addressed to Montana Legislators on January 12, 2015, from Mr. Richard Simms, on behalf of the Montana Land and Water Alliance regarding the proposed CSKT Compact. Mr. Simms makes a number of incorrect statements pertaining to both the Compact itself and to historic irrigation practices on the Flathead Indian Reservation. For ease of reference, I have reproduced Mr. Simms' numbered claims and addressed them in the order in which he raised them in his letter and accompanying "Executive Summary.

Mr. Simms claims at the outset that The Compact transforms "Federal reserved water rights under *Winters v. United States*, 207 U.S. 564 (1908), into Indian reserved water rights, greatly expanding the nature and scope of the permissible claims that Indian tribes can make under the Winters Doctrine."

To support his initial premise, Mr. Simms describes arguments made in the context of litigation by the Tribes as to their ownership of land and water on and underneath the Reservation and attributes that legal position to the Commission, going further to state that the Compact ratifies that position. The articulated position of the Tribes that Mr. Simms attributes also to the Compact Commission likely reflects the Tribes' legal position should their filed claims go forward in the Adjudication if the Compact fails. They do not, however, reflect a position agreed to by the parties in the Compact, nor do they accurately represent the underlying premise of the Compact. The proposed Compact, on the contrary, quantifies usufructuary rights for the Tribes, and contains nothing inconsistent with Article IX, Section 3 of the Montana Constitution providing that "waters within the boundaries of the state are the property of the state for the use of its people."

Mr. Simms' assertion that the Compact Commission has adopted "the legal proposition that the Tribes reserved their own Reservation with a 'time immemorial' water rights priority" appears to lie at the heart of his argument that the Compact transforms federal reserved rights into Indian reserved rights. It is also incorrect. Fundamental to the Commission's negotiating position is the proposition that the United States withdrew the Flathead Indian Reservation from the public

domain, that appurtenant water rights have a July 16, 1855 priority date, and that the Tribes retained some "aboriginal" rights while ceding the majority of their aboriginal territory to the United States. This is reflected in the proposed Compact and attached abstracts, which recognize rights with both a July 16, 1855 priority date and those with a "time immemorial" priority date. This recognition is consistent with controlling legal precedent determining that rights held by the Tribes prior to the treaty date and not ceded by them, carry a time immemorial priority date.[1]

Ultimately, Simms' arguments are based on a manifestly false assumption: namely that the Tribes have the ability to claim—and by extension that the State has the ability to negotiate—only so called *"Winters"* rights, those rights created through the reservation of land from the public domain. This premise ignores the fact that state and federal courts have determined that not only do aboriginal rights carrying a time-immemorial priority date exist, but they are also part and parcel of the category of "reserved rights" for purposes of McCarran Amendment adjudicatory jurisdiction, and for purposes of the Montana General Stream Adjudication.[2]

1. **"The Tribes claimed and the 2013 Compact would have awarded 179,539 acre feet of water, measured at the farm turnouts, for the irrigation of 128,241.73 acres of land in the Flathead Irrigation Project. The historical duty of water in the Project was 4.7 acre feet per acre. The 2013 Compact reduced the historical duty by 3.3 acre feet per acre to 1.4 acre feet, diminishing the amount of water historically available to the irrigators on farm by 423,200 acre feet annually. This reduction in supply is carried into the new Compact."**

At the outset, Mr. Simms does not identify the source from which he derives a "historic duty" of 4.7 acre feet per acre, citing only a 1938 Bureau of Indian Affairs report as support for the numbers used throughout his argument on this point. Mr. Simms also fails to note that the 1.4 acre-feet per acre—the amount that represented the maximum Farm Turnout Allowance under the former Water Use Agreement—is not part of the current proposed Compact.[3]

It appears that the most likely source for Mr. Simms' claims is a document referred to as the "Clotts" report in the BIA's "Operation and Maintenance Guidelines for the Flathead Indian Irrigation Project." The report is attached as Appendix A to those Guidelines.[4] Mr. Simms claims, based on this report, that 490,859 acre-feet of water was available for the irrigation of 104,859 project acres, equaling a "historic duty" of 4.7 acre-feet per acre. The clear implication is that this "historic duty" was actually delivered to irrigators on the project. In fact, the 490,859 referred to in the report represents a tally of *the total supply of water theoretically available for irrigation of the project*, and is not only predicated on diversion and pumping structures that had yet to be built but actually counts at least 48,000 acre-feet of water from the Jocko twice,

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[1] *State ex rel. Greely v. Confederated Salish and Kootenai Tribes of Flathead Reservation*, 219 Mont. 76, 92 (1985).
[2] *See Greely*, 219 Mont. 76, 99; *Joint Bd. of Control of Flathead, Mission and Jocko Irr. Districts v. U.S.*, 832 F.2d 1127, 1131 (9th cir.1987).
[3] Neither is it a correct characterization of the limitations of the 2013 FIIP Water Use Agreement, which also provided for a Measured Water Use Allowance to allow delivery of up to two acre-feet per acre.
[4] *Operation and Maintenance Guidelines, Flathead Indian Irrigation Project, Flathead Agency*, available at: http://projects.battelle.org/fiipea/BIA_Operation_and_Maintenance_Guidelines.pdf.

anticipating that it could be made available in the Mission after construction of the Flathead pumping station.

The irrigated acreage cited by Simms is equally hypothetical. The Clotts report does not contain a reference to 104,859 acres, but does reference 104,490 acres of land "Under Constructed Works." The actual number of acres irrigated in 1938, according to the report, was only 76,002. The amount of 4.7 acre-feet per acre derived by Mr. Simms is a purely imaginary one based on a division of all sources of water in the project area by the total acres at the time that were physically capable of being served by the project.

Two other reports reference historically delivered amounts and associated quotas reported contemporaneously with the Clotts report. The first is a 1939 Department of Interior, U.S. Indian Irrigation Service report titled "Report on Water Supply of the Flathead Irrigation Project Montana," prepared by P.V Hodges. The second report expands the period of record addressed in the Hodges report to include a period following the construction of the Flathead pumping plant, and is referenced here as the Kollenborn report.[5] Both of these sources cite historic delivery amounts of much less than 4.7 acre-feet per acre.[6] Both reports demonstrate that even prior to the implementation of interim instream flow requirements, the FIIP was a deficit irrigation system, and both current and historic quotas reflect that fact.[7]

All of the referenced sources cite delivery amounts for a time when the acreage irrigated by the project was significantly less than it is today, which would in theory have resulted in a larger per-acre quota. This is somewhat offset by the fact that the Flathead River pumping plant had not yet been completed, thus reducing the supply available to the Mission Valley relative to the present. It is also important to view these sources in light of the fact that the interim instream flows—instituted as a result of a 1987 judicial decision—had not yet been implemented.[8]

One of the difficulties faced by the negotiating parties was to accurately quantify historic farm deliveries on the project in the face of missing or incomplete records of water actually delivered to individual farm turnouts. The method used to calculate allocations between instream flow rights and project deliveries used measured data from the period from 1983 to 2002 to create a water budget for the entire project. The water budget was then input unto the HYDROSS water accounting model, which was used to create water budgets for individual service areas and ultimately to determine water savings that could be achieved through improvements to the project and added to instream flows while maintaining farm delivery values.[9]

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[5] H.S. Kollenborn, 1945. *Report on Water Supply and Water Use for the Flathead Irrigation Project Montana.* United Stated Department of the Interior Office of Indian Affairs Irrigation Division Agricultural Economics Unit.

[6] For example, according to the Hodges Report, average deliveries to the Mission Valley in the period from 1934 through 1938 were 1.45, 1.17, 1.26, 3.40, and 1.54 acre-feet per acre for Mission, Post, Pablo, and Hillside Lands respectively. Memo from Seth Makepeace, dated January 22, 2015, p. 2, citing the Hodges Report.

[7] Makepeace Memo.

[8] *Id.*

[9] CSKT Compact Technical Working Group, *Report of Findings: Technical review of proposed CSKT water rights settlement for the Water Policy Interim Committee*, August 26, 2014 (hereinafter Technical Working Group Report"), available at: http://www.dnrc.mt.gov/rwrcc/Compacts/CSKT/wpic/tech-work-group_findings-sept23.pdf

Mr. Simms cites the 2013 proposed abstracts for the FIIP water rights for the proposition that the total quantification for the project equals 179,538 acre-feet, resulting in a "duty" of 1.4 acre feet per acre. Those abstracts were limited by the maximum Farm Turnout Allowance agreed to in the FIIP Water Use Agreement. As demonstrated in the State's technical review, the Farm Turnout Allowances accurately reflect historic farm deliveries when aggregated and averaged across a service area.[10] They do not, however, form an appropriate "duty" or quota at the individual farm turnout because they do not accurately reflect individual variations in crop consumption and application efficiency across the project.

Partially as a result of the State's analysis, the Farm Turnout Allowance is not a provision of the current proposed Compact. The Compact clearly states that the River Diversion Allowances supply the FIIP Water Use Right.[11] The River Diversion Allowances, which are set forth in Appendix 3.2 to the 2015 proposed Compact, add up to a maximum RDA of 302,250 acre-feet.[12] The 2015 proposed compact uses the RDAs as evaluated using Historic Farm Deliveries set forth in Appendix 3.3 to satisfy the FIIP Water Use Right. These numbers are consistent with historic use on the FIIP. In the event that RDAs are not sufficient to meet Historic Farm Deliveries, they can be adjusted.[13]

2. **"The 2013 Compact, discussed above, would have permanently reduced the irrigators' water supply by 423,200 acre feet annually. The new Compact, released on January 7, 2015, preserves what would have been done by the 2013 Compact, but exacerbates the permanent reduction in the irrigators' water supply by 35,908 to 71,816 more acre feet annually by changing the measurement of the water delivered to the irrigators from the farm turnouts to a River Diversion Allowance."**

Mr. Simms' assertion on this point is incorrect. The RDA numbers are identical to the 2013 RDA numbers. The key change in the 2015 proposed Compact is that the RDAs, as evaluated using Historic Farm Deliveries, and not the FTAs, are the limiting factors for FIIP deliveries. The cumulative RDA, as illustrated above, is a much larger amount of water than the FTA for the three project service areas precisely *because* it was quantified to take into account project inefficiencies between the River Diversion point and the farm turnout, and to be capable of supplying excess water on top of the FTA, even after these carriage inefficiencies are accounted for. This change was in direct response to irrigator requests for verification that the modeled numbers were capable of supplying historic delivery amounts. The evaluation process is also intended to address this point. In the unlikely event that RDAs are incapable of supplying Historic Farm Deliveries within a service area, those RDAs may be adjusted using pumped water.

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[10] *Instream Flow and Irrigation Diversion Aspects of the FIIP Water Use Agreement: State of Montana Evaluation and Recommendations*, August 4, 2014, available at: http://www.dnrc.mt.gov/rwrcc/Compacts/CSKT/state_wua_evaluation_8-4-14.pdf.

[11] See Compact Article II.58.

[12] Not included in this number is the 65,000 acre foot RDA for the Flathead pumping station. RDAs are quantified for wet, normal, and dry years. The cumulative RDAs are 302,250 (wet), 278,000 (normal), and 256,900 (dry).

[13] Compact Article IV.D.3.

3. **"The on-Reservation instream flows were created: 1) to provide a basis upon which to exercise Tribal control over all of the water entering the Reservation; 2) to impose numerous conservation measures on the Irrigation Project irrigators and to convert the water thus saved to Tribal instream flows 3) to make it possible to control the "secretarial water rights" within the Irrigation Project; and 4) to make it possible to control all of the state-based, private diversions on the Reservation outside of the Irrigation Project to minimize their use of water. These four objectives are accomplished through the Tribes' on-Reservation instream flow claims, which are adopted in the Compact."**

The basis of Mr. Simms' argument appears to be that fisheries instream flow water rights may only be used to preclude upstream diversions by junior users and to prevent new development. Therefore, he argues, to quantify water rights for the Tribes for the sole purpose of exerting control over all of the water on the Reservation is an illegal use of such rights. He appears to derive this theory—once again—from the Tribes' articulated litigation position as to ownership of water on the Reservation. He concludes, based on this reasoning, and without any legal citations to support his argument, that the Supreme Court would not recognize the types of instream flow rights quantified under the Compact, and that the Compact "eliminates the State of Montana's constitutional mandate to administer public waters on the Flathead Reservation.

The Compact manifestly represents not an adoption of the Tribes' legal argument but a significant compromise of their legal positions on ownership and instream flow needs for fisheries. The instream flow rights quantified to the Tribes under the compact for the purposes of maintaining fisheries were almost universally calculated, located, or conditioned to protect existing uses rather than to maximize flows for fish or exert control over water resources. This is clear from a close look at the three types of on-Reservation instream flows categorized by the compact and criticized by Simms. Finally, the Compact, by implementing a system of shared administration over waters on the Reservation that must be adopted by the Montana legislature, comports with Article IX, Section 3(4) of the Montana Constitution.

a. Natural Instream Flows

Simms asserts that the "Natural Instream Flows" quantified in Compact Article III.C.1.d.i and Appendix 10, were "designed to make it possible for the CSKT to exercise control over all of the natural runoff from the Mission Mountains that enters the Reservation." This is manifestly untrue. These flows were established in a way that overtly protects existing uses. This is demonstrated by the fact that every one of the enforcement points for these flows is located *upstream* of existing diversions. This means that these rights *cannot* be used to make a call against any existing uses. The argument that these rights are somehow intended to "exert control" over all natural runoff is senseless.

b. FIIP Instream Flows

The FIIP instream flows quantified by Compact Article III.C.1.d.ii and Appendix 11, were derived based not on optimal fisheries conditions but rather on the existing water budget for

streams feeding the FIIP, taking into account relatively modest gains in efficiency that would be achieved through State and federal contributions to settlement.[14] Simms implies that these increases in efficiency are obtained at the expense of "conservation measures" imposed on FIIP irrigators. To the contrary, the majority of both Operational Improvements and Rehabilitation and Betterment activities will be implemented using State and federal dollars that will not be available without the settlement. Projects affecting FIIP infrastructure will be implemented without the imposition of any conditions or requirements on individual irrigators. Ultimately, the extent to which the irrigators participate in project improvements relating to on-farm measurement and efficiency will directly impact the ability to evaluate the sufficiency of RDAs, to provide direct benefits to irrigators in terms of on-farm efficiency upgrades, and to achieve satisfaction of the Tribes' target instream flows which will allow additional saved water to be shared between instream flows and the project.

Simms is correct that the FIIP instream flows, as opposed to the interim instream flows that are currently in place were not calculated using "three commonly accepted fishery methodologies to determine minimum instream flows." Rather, the FIIP instream flows were quantified based on "streamflow remaining after irrigation diversions have occurred" and taking into account efficiency increases from Operational Improvements.[15] When compared to streamflows generated using a "commonly accepted fishery methodology," the compacted FIIP instream flows are *lower* than those generated using the type of methodology of which Simms appears to approve.[16] This is precisely the type of concession that is possible through the Compact as opposed to litigation. The Tribes' filed claims will almost certainly be calculated based on "commonly accepted fishery methodologies" and will undoubtedly represent much larger claimed instream flows than those quantified by the Compact.

c. Other Instream Flows

Simms next asserts that 82 instream flow rights quantified under the compact were created to "exercise Tribal control over the 'Secretarial water rights' within the Flathead Irrigation Project and the 'private water rights' outside of the Project. This section of the letter is titled "The Other Reservation Instream Flows" and presumably Simms is referring to the "Other" category of instream flows quantified under Article III.C.1.d.iii and Appendix 12 of the Compact, given that he previously addressed both the FIIP and Natural instream flow categories. It is difficult to determine that this is the case, however, as there are only 49 "Other" instream flows, not 82, and the terminology used in the letter and attached map is only partially consistent with that used in the Compact.

Presuming, nonetheless, that the "Other" instream flows are at least in part the rights to which Simms refers, he fails to mention a critical protection for existing uses. Namely, the "Other" instream flows, while quantified in the Compact,[17] cannot be enforced until a final decree for the

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[14] *Technical Working Group Report* at 46.
[15] *Id.*
[16] *Id. at 46-47.* (The Report notes that "in some stream reaches, the use of streams to convey water to or from storage reservoirs inflates these numbers above that which would have naturally occurred.")
[17] Compact Article III.C.1.d.iii, Appendix 12.

relevant basin has been issued by the Montana Water Court *and* an enforceable schedule has been established pursuant to Section 2-1-115 of the Unitary Management Ordinance. The process for setting an enforceable schedule requires notice and one or more public meetings, as well as extensive technical work to establish the extent of existing uses and the proposed enforceable schedule. Most important, the enforceable schedule must be "based on a water budget that allows valid water rights to be exercised,"[18] meaning that these flows, just like the Natural flows, by definition protect existing uses rather than controlling them, as Simms asserts.

4. **"In the guise of off-reservation instream flows, the Compact would award the Tribes control over almost all of the water west of the Continental Divide in Montana, the use of which was previously under the control of the State of Montana for the Beneficial Use of its Citizens."**

Mr. Simms once again appears to base his argument the Tribes' articulated litigation position. As previously explained, the Tribes' litigation position, to the extent it is represented by the document cited by Mr. Simms, is neither representative of the Commission's position on these issues nor reflective of the settlement provisions contained in the Compact. On the contrary, the Tribes made substantial concessions on their legal claims in the Compact.

Mr. Simms asserts that Article III of the Treaty of Hellgate cannot be interpreted to provide off-Reservation instream flow water rights for the Tribes. The language at issue reads: "The exclusive right of taking fish in all streams running through or bordering said reservation is further secured to said Indians; *as also the right of taking fish at all usual and accustomed places, in common with the citizens of the Territory...*" (emphasis added). Simms asserts that the italicized language provides the Tribes with no greater rights than are held by non-Indians in the State of Montana: "A right owned in common is a right owned or shared equally by all members of the common group, which in this case includes the Tribes and the non-Indian citizens of Washington Territory, who today are the non-CSKT citizens of the State of Montana." (Simms, pp. 11-12).

Simms' literal interpretation has been considered and explicitly rejected by the U.S. Supreme Court: "The Court has interpreted the fishing clause in these treaties on six prior occasions. In all of these cases the Court placed a relatively broad gloss on the Indians' fishing rights and—more or less explicitly—rejected the State's "equal opportunity" approach."[19] Simms further maintains that there is no legal precedent for recognizing off-reservation rights with a "time immemorial" priority date, and that Article III and its reference to "usual and accustomed places" is limited to the areas ceded by the Tribes west of the Continental divide. Simms provides no legal precedent in support of either proposition.[20]

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[18] UMO Section 2-1-115(3).

[19] *Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n*, 443 U.S. 658 (1979).

[20] The citation to the Indian Claims Commission Findings of Fact for Docket No. 61, available as 8 Ind. Cl. Com. 40 is misplaced. Findings of fact no. 17 through 19 make no reference to Article III or the rights it conveys but instead represent general historical observations about the territories the various tribes considered to be part of their exclusive ownership.

The off-Reservation rights quantified under the Compact reflect the underlying uncertainty in this area of the law. It is precisely this uncertainty and the associated risks to both parties that the off-Reservation rights are intended to resolve. The Commission has consistently emphasized this fact and its importance to the negotiated provisions ultimately agreed to in the Compact. While there is substantial precedent for the existence of on-Reservation instream flows with a time-immemorial priority date,[21] limited precedent exists for or against the extension of these types of rights to the Tribes' ceded aboriginal territory off the Reservation.

What precedent does exist is conflicting. Idaho's Snake River Basin Adjudication Court determined that the Nez Perce tribes lacked rights to off-Reservation instream flows with the exception of a limited number of named springs.[22] The Tribes' claims were never considered on appeal as the State of Idaho entered into a settlement with the Tribes that included the recognition of a number of state-based instream flow water rights, among other concessions. By contrast, the Washington Supreme Court affirmed a state trial court decision that despite congressional diminishment of the Tribes' off-reservation rights, the Yakima Tribes nonetheless possess time-immemorial off-Reservation rights in the Yakima River and its tributaries to preserve the fishery.[23]

Because there is no controlling precedent on the issue of whether the Article III language provides a minimum instream flow water right to sustain off-Reservation fisheries, the Commission looked to the limited existing state court precedent on this point as well as to existing federal precedent interpreting other aspects of this treaty language.[24] In doing so, it concluded that there is enough uncertainty about the meaning of this language that settlement of the Tribal claims in a way that effectively mitigates adverse impacts to state water users and does not create legal precedent is far preferable to the time, expense, economic impact, and risk of litigation. This is particularly true given that existing precedent does provide support for tribal claims, and it is well established that ambiguity in treaty language must be resolved in favor of tribal interests.[25]

## Conclusion

Simms closes with a refrain of his first argument, stating that the Compact gives "control of the public water supply to the Tribes" and violates Article IX, Section 3 of the Montana Constitution. The Commission has previously addressed this argument in numerous documents and in response to Simms' first point above. Contrary to Simms' assertion, the Compact, far from giving the Tribes control over all water on the Reservation or in Western Montana, precluding the continued use of existing state based rights, preventing changes of use of existing rights, and preventing the development of new uses under state law, does precisely the opposite. The Compact protects existing uses while complying with the State's obligation under federal

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[21] *See U.S. v. Adair, 723 F.2d 1394*, (9th Cir. 1983), *cert. denied* 104 U.S. 3536 (1984); *Greely*, 219 Mont. at 99.
[22] *In re. SRBA Case No. 39576, Consolidated Subcase 03-10022*, Idaho Fifth Judicial District Court (Nov. 10, 1999).
[23] *State, Dept. of Ecology v. Yakima Reservation Irr. Dist.*, 121 Wash.2d (1993).
[24] See pp. 2-4 of RWRCC letter to Chairman Vincent and the Water Policy Interim Committee, dated 12/16/2013, available at: http://www.dnrc.mt.gov/rwrcc/Compacts/CSKT/wpic/rwrcc_letter_to_vincent.pdf
[25] *Greely*, 219 Mont. at 90; *see also* Memo from Helen Thigpen, Staff Attorney, to Montana Water Policy Interim Committee, Dated August 22, 2014 at p. 29.

law to recognize Tribal reserved rights; it provides for changes of use on the Reservation—something that has not been legally possible since 1996; and it provides a large supply of newly available water from the Flathead River system and Hungry Horse reservoir that will allow for new development of water uses both on and off the Reservation.

Sincerely,

Melissa Hornbein
Staff Attorney
Montana Reserved Water Rights Compact Commission

C: Governor Steve Bullock
Attorney General Tim Fox
John Tubbs
Chris Tweeten

# Understanding Abstracts for Statements of Claim in Montana

The Montana Claims Examination Manual, Rule 2(a), defines an abstract as "the computer printout of each claim of an existing water right showing the information submitted on the original or amended statement of claim, any changes authorized by these rules or by the water court, remarks noting any obvious factual or legal issues presented by the claim, and other remarks explaining the nature and extent of the claimed water right."

An abstract will typically contain the following elements of a water right:

1. Owner and address
2. Purpose
3. Source
4. Type of irrigation system (for irrigation claims)
5. Priority date
6. Type of historical right
7. Flow rate
8. Volume
9. Maximum acres
10. Period of use
11. Point of diversion
12. Means of diversion
13. Reservoir (if applicable)
14. Place of use.

An abstract also includes the basin code, water right identification number, surface water or groundwater designation, climatic area for irrigation, and period of diversion. This article describes these elements as they are reflected on an abstract for a statement of claim. All definitions of water right elements described in this article are generally drawn from Rule 2 of the Montana Claims Examination Manual, and portions of several different abstracts are used as examples below.

Over 200,000 water right claims have been filed in Montana's general stream adjudication, and their abstracts reflect their status as statements of claim. Abstracts are also generated for water right permits, certificates, and reservations. This is designated on an abstract after the basin code and water right identification number:

# GENERAL ABSTRACT

**Water Right Number:** 41F 78415 00 STATEMENT OF CLAIM

The version type indicates whether the abstract is showing the original right, post-decree modifications from the Montana Water Court, or a change authorization. Version status indicates whether an abstract is active, or a different status such as dismissed or withdrawn.

**Version:** -- ORIGINAL RIGHT
**Version Status:** ACTIVE

"Owner" means any person, according to Section 85-2-102, MCA, who has title or interest in water rights or properties. The claim owner is reflected with a mailing address:

**Owners:** USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)
5001 SOUTHGATE DR
BILLINGS, MT 59101 4669

"Priority Date" means the allocation date, or date of first use associated with a beneficial use of water which determines ranking among water rights, usually expressed by day, month, and year. The priority date is shown with its enforceable priority date, and the type of historical right will indicate whether the claim's historical basis was a filed right, use right, or based upon a pre-1973 District Court decree. Most claims will show the priority date and enforceable priority date as the same:

**Priority Date:** September 6, 1966
**Enforceable Priority Date:** September 6, 1966

**Type of Historical Right:** FILED

Late claims (those filed pursuant to Section 85-2-221, MCA) will show an enforceable priority date of June 30, 1973:

**Priority Date:** May 10, 1889
**Enforceable Priority Date:** June 30, 1973

**Type of Historical Right:** DECREE

The purpose of a right will indicate whether its use includes irrigation, stock, domestic, municipal, industrial, or another purpose such as fishery or fish and wildlife.

**Purpose (use):** FISH AND WILDLIFE

**Maximum Flow Rate:** 1050 CFS

**Maximum Volume:** 351883.00 AC-FT

**Source Name:** MADISON RIVER
**Source Type:** SURFACE WATER

"Flow Rate" means the rate at which water has been diverted, impounded, or withdrawn from the source for beneficial use. Historically, flow rate was measured in miner's inches. The official unit of measurement for water in Montana is cubic feet per second, or CFS. Section 85-2-103, MCA. 40 miner's inches equals one CFS, or 448.83 gallons per minute. Small flows are measured in gallons per minute and larger flows are measured in cubic feet per second.

Volumes are quantified in acre-feet per year. An acre-foot is the amount of water necessary to cover one acre with one foot of water. One acre-foot is about 325,000 gallons. Not all claims are decreed a quantified volume, such as direct flow irrigation claims, and many stock claims.

The source name is the natural source from which water is diverted or otherwise taken for a beneficial use, and the source type reflects whether the right is for surface or ground water.

**Source Name:** NORTH MEADOW CREEK
**Source Type:** SURFACE WATER

"Point of Diversion" (POD) means the location or locations where water is diverted from the source.

**Points of Diversion and Means of Diversion:**

| ID | Govt Lot | Qtr Sec | Sec | Twp | Rge | County |
|---|---|---|---|---|---|---|
| 1 | | SWNENE | 30 | 4S | 1W | MADISON |

**Period of Diversion:** APRIL 1 to OCTOBER 4

**Diversion Means:** HEADGATE

**Period of Use:** APRIL 1 TO OCTOBER 4

**Purpose (use):** IRRIGATION

For instream or inlake appropriations, the point of diversion is the portion of the source in which the instream or inlake use occurs. Period of use is generally defined as the time from the first use of the year through the last use of the year, and period of diversion indicates the time

that water is diverted for beneficial use. For many rights that do not involve storage, period of use and period of diversion may be the same.

**Points of Diversion and Means of Diversion:**

| ID | Govt Lot | Qtr Sec | Sec | Twp | Rge | County |
|---|---|---|---|---|---|---|
| 7 | | | 17 | 2N | 2E | GALLATIN |
| **Period of Diversion:** JANUARY 1 to DECEMBER 31 | | | | | | |
| **Diversion Means:** INSTREAM | | | | | | |
| 31 | | | 6 | 1N | 1E | JEFFERSON |
| **Period of Diversion:** JANUARY 1 to DECEMBER 31 | | | | | | |
| **Diversion Means:** INSTREAM | | | | | | |
| 49 | | | 18 | 1N | 2W | JEFFERSON |
| **Period of Diversion:** JANUARY 1 to DECEMBER 31 | | | | | | |
| **Diversion Means:** INSTREAM | | | | | | |

"Place of Use" (POU) means the lands, facilities, or sites where water is beneficially used. For irrigation, the place of use will be shown with the maximum irrigated acres.

**Purpose (use):** IRRIGATION

**Place of Use:** (3 total records)

| ID | Acres | Govt Lot | Qtr Sec | Sec | Twp | Rge | County |
|---|---|---|---|---|---|---|---|
| 1 | 81.00 | | SE | 29 | 4S | 1W | MADISON |
| 2 | 41.00 | | W2SW | 28 | 4S | 1W | MADISON |
| 3 | 10.00 | | NWNW | 33 | 4S | 1W | MADISON |
| Total: | 132.00 | | | | | | |

For a municipal well, the place of use may be depicted as follows:

| ID | Acres | Govt Lot | Qtr Sec | Sec | Twp | Rge | County |
|---|---|---|---|---|---|---|---|
| 1 | | | S2 | 25 | 2N | 1E | GALLATIN |
| | Subdivision: | | MILWAUKEE LAND CO SECOND ADD ( | | | | |
| 2 | | | SE | 26 | 2N | 1E | GALLATIN |
| | Subdivision: | | MILWAUKEE LAND CO SECOND ADD ( | | | | |
| 3 | | | NE | 35 | 2N | 1E | GALLATIN |
| | Subdivision: | | MILWAUKEE LAND CO SECOND ADD ( | | | | |
| 4 | | | NW | 36 | 2N | 1E | GALLATIN |
| | Subdivision: | | MILWAUKEE LAND CO SECOND ADD ( | | | | |

An instream stock right will be depicted this way if the stock use extends along a stretch of a stream or river that encompasses multiple quarters or sections in a legal description:

Purpose (use): STOCK

Place of Use: (10 total records)

| ID | Acres | Govt Lot | Qtr Sec | Sec | Twp | Rge | County |
|---|---|---|---|---|---|---|---|
| 1 | | | N2N2SE | 29 | 1N | 4E | GALLATIN |
| 2 | | | SENESE | 29 | 1N | 4E | GALLATIN |
| 3 | | | SWNESE | 29 | 1N | 4E | GALLATIN |
| 4 | | | SENWSE | 29 | 1N | 4E | GALLATIN |
| 5 | | | SWNWSE | 29 | 1N | 4E | GALLATIN |
| 6 | | | SESENE | 29 | 1N | 4E | GALLATIN |
| 7 | | | NWSENE | 29 | 1N | 4E | GALLATIN |
| 8 | | | SWSENE | 29 | 1N | 4E | GALLATIN |
| 9 | | | SESWNE | 29 | 1N | 4E | GALLATIN |
| 10 | | | NESWNE | 29 | 1N | 4E | GALLATIN |

An instream flow right for fisheries will have a place of use that details the different reaches on which the flow rate is claimed, similar to the description for the instream stock right. The place of use parcels listed should not be used to add up the flow rate. The flow rate for the claim is designated under the maximum flow rate and maximum volume fields of the abstract. The place of use should be used to interpret the specific stream reaches where the instream flow would be protected for that particular claim. The place of use for an instream flow right for fisheries is reflected this way:

| ID | Acres | Govt Lot | Qtr Sec | Sec | Twp | Rge | County |
|---|---|---|---|---|---|---|---|
| 1 | | | SE | 10 | 5S | 1W | MADISON |
| 2 | | | SW | 11 | 5S | 1W | MADISON |
| 3 | | | | 14 | 5S | 1W | MADISON |
| 4 | | | | 15 | 5S | 1W | MADISON |
| 5 | | | | 22 | 5S | 1W | MADISON |
| 6 | | | | 23 | 5S | 1W | MADISON |
| 7 | | | | 27 | 5S | 1W | MADISON |
| 8 | | | | 34 | 5S | 1W | MADISON |
| 9 | | | | 3 | 6S | 1W | MADISON |
| 10 | | | | 4 | 6S | 1W | MADISON |
| 11 | | | | 8 | 6S | 1W | MADISON |
| 12 | | | | 9 | 6S | 1W | MADISON |
| 13 | | | | 17 | 6S | 1W | MADISON |
| 14 | | | | 20 | 6S | 1W | MADISON |
| 15 | | | | 29 | 6S | 1W | MADISON |
| 16 | | | | 30 | 6S | 1W | MADISON |
| 17 | | | | 31 | 6S | 1W | MADISON |
| 18 | | | | 32 | 6S | 1W | MADISON |
| 19 | | | | 5 | 7S | 1W | MADISON |
| 20 | | | | 6 | 7S | 1W | MADISON |
| 21 | | | | 8 | 7S | 1W | MADISON |
| 22 | | | | 17 | 7S | 1W | MADISON |
| 23 | | | | 20 | 7S | 1W | MADISON |
| 24 | | | | 28 | 7S | 1W | MADISON |
| 25 | | | | 29 | 7S | 1W | MADISON |
| 26 | | | | 33 | 7S | 1W | MADISON |
| 27 | | | | 34 | 7S | 1W | MADISON |

The point of diversion and place of use for instream and inlake claims are clarified during examination:

RULE 31. POINT OF DIVERSION (POD) AND MEANS OF DIVERSION FOR INSTREAM OR INLAKE APPROPRIATIONS. The department's examination of the claimed POD for instream or inlake other uses claims shall follow the procedures described in Rule 8, W.R.C.E.R. In addition, the following procedures will apply to the examination of the POD for such claims. (a) For instream water use, the legal land description of the POD will be the same as the legal land description of the POU. (b) The claimed POD may be revised by the department so that the POD and POU legal land descriptions for instream water use will be the same. (c) A clarifying remark should be added to the point of diversion to provide a general geographic description of the instream reach claimed and to promote the public's ability to understand the extent of the claim. Example: THIS RIGHT FOR INSTREAM USE APPLIES FROM SMITH DAM IN JONES COUNTY DOWNSTREAM TO THE CONFLUENCE OF THE NORTH FORK OF ROCK CREEK WITH THE GREEN RIVER IN MACON COUNTY. (d) For all instream or inlake surface appropriations, the claimed means of diversion will be changed during the department's examination to "INSTREAM" or "INLAKE."

Abstracts reflect a geocode, which assists the Montana Department of Natural Resources and the Montana Department of Revenue in updating ownership for water rights transfers.

**Geocodes/Valid:** 06110536201040000 - Y

The last field in an abstract may contain remarks, including informational remarks and issue remarks.

**Remarks:**
STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.

CLAIMS 41F-W133728-00, 41F-W133729-00 AND 41F- W133730-00 ARE ALL FOR THE SAME SINGLE WATER RIGHT. THREE CLAIMS WERE FILED TO SHOW THE DIFFERENT QUANTITIES OF WATER USED DURING THREE DISTINCT SEASONAL USES. CLAIM 41F-W133728-00 IS FOR JUNE 1 TO JULY 15, 41F-W133729-00 IS FOR JANUARY 1 TO MAY 31, AND 41F-W133730-00 IS FOR JULY 15 TO DECEMBER 31.

Remarks are added by the department or the Water Court to limit or define a water right, to explain unique aspects of a water right, and to identify potential factual and legal issues. Remarks that limit, define, or explain unique aspects of a claim are "clarifying" or informational remarks and appear on the abstract under the element they clarify or at the end of the abstract if they contain general information. Remarks that identify potential factual or legal issues are "issue" remarks and appear in the issue remark box at the end of the abstract. Because issue remarks must be resolved by the Montana Water Court pursuant to Section 85-2-248, MCA,

and also because objectors often use issue remarks to decide whether to object to a claim, these remarks are some of the most important aspects of an abstract.

All of Montana's Indian water rights settlements involve the use of supplemental water sources to facilitate the balancing of the tribal water rights being recognized with the protections of state law-based uses. The Flathead System Compact Water Right (FSCW), set forth in Article III.C.1.c. and abstracted in Appendix 9 of the Compact, is the proposed CSKT Compact's version. The FSCW can be sourced from the mainstem of the Flathead River, Flathead Lake and the South Fork of the Flathead River, either on or off the Flathead Indian Reservation, or, with DNRC approval, it may be used downstream of the confluence of the Flathead and Clark Fork Rivers. This direct flow water right includes the use of up to 90,000 acre-feet from Hungry Horse Reservoir.

The Diversion Means and Purposes are uniquely flexible for this water right, a design that accommodates the diverse host of potential future and existing uses to be supplied by this water right:

1. State Water Mitigation Bank: Pursuant Article IV.B.7, 11,000 acre-feet of this water right can be designated by the Montana DNRC for the purposes of mitigating new or existing domestic, commercial, municipal and industrial water uses for a lease fee of $40/acre-foot/year plus inflation. and amount of water allocated at the discretion of the State that can be used to address existing limitations of legal water availability in some areas of the Clark Fork Basin.
2. Flathead Indian Irrigation Project Water Use Right Supplemental Water: the Tribes are obligated to lease water from the FSCW right for purposes supplementing River Diversion Allowances during periods of Shared Shortages as set forth in Article IV.C through F of the Compact for a lease fee of $8/acre-foot/year plus inflation plus a $25 administrative fee per lease.
3. Uses by the Tribes: FSCW provides water for the Tribes for existing and future tribal water needs, thereby settling for all time the Tribes' claims to reserved water rights.
4. Future Water Lease Options: FSCW provides the Tribes an opportunity to lease this water to water users within Montana in both the Flathead and Clark Fork River basins.
5. Keeping Water in Montana: FSCW may not be used or leased outside of Montana.
6. ESA and Columbia Treaty Compliant: FSCW has been reviewed by the Bureau of Reclamation and Army Corps of Engineers as an amount of water that can be obligated in Montana without disrupting endangered species flow augmentation requirements or flood storage obligations for Hungry Horse Reservoir.
7. Maintains off-Reservation Jurisdiction: The use of the FSCW off the Reservation may only be done under the terms and conditions of state law (e.g. for quantification or issuance of water rights, water quality, species management, etc.).
8. Tracking FSCW use: FSCW uses and leases will be accounted for in the DNRC water rights database.
9. Call Protection: this water right does not subject any existing water users to call (see FSCW exercise constraints below).

The use of FSCW is restricted as to the flow conditions required to be present along the south fork and mainstem of the Flathead River before the water right can be used. There are also conditions regarding the filling and release of water impounded by both Hungry Horse Reservoir and Flathead Lake.

The requirements to maintain these instream flow and ramping rates provide assurances that the use of FSCW will comport with the FERC licensing regulations for Kerr Dam, the Biological Opinion requirements of Hungry Horse Reservoir, the downstream Columbia River Endangered Species Act requirements, Flathead Lake Filling targets, flood storage requirements, and the Biological Constraints of Hungry Horse Reservoir. Accordingly, the Tribes are required to coordinate with the Hungry Horse Operator so as to ensure that Hungry Horse releases match depletions associated with the FSCW use during lower flow periods of the year. In contrast to a typical water right that would look to make call on junior uses during times of limited supply, the FSCW use is predicated on the mandate that the 90,000 acre-feet of storage be released in a manner so that call conditions will not occur, with the strict stipulation that should such call conditions occur, FSCW use would need to be curtailed until such time as call conditions are no longer present. In other words, the water right mandates that it mitigate its own depletive use with Hungry Horse Reservoir storage water, thereby protecting other existing water uses (regardless of purpose) from depletions associated with FSCW use.

**Table 3: Flathead Flow Minimums below Hungry Horse Dam (USGS gage 12362500) and Columbia Falls (USGS gage 12363000)**

| If the April-August | below Hungry Horse Dam | below Columbia Falls |
|---|---|---|
| greater than 1,790 KAF | 900 cfs | 3,500 cfs |
| 1,190-1,790 KAF | 400-900 cfs | 3,200-3,500 cfs |
| less than 1,190 KAF | 400 cfs | 3,200 cfs |

**Table 4: Hungry Horse Dam Ramping Rates**

| If the discharge below Columbia Falls is: | Ramping UP may not exceed: |
|---|---|
| greater than 10,000 cfs | 12,000 cfs /day |
| 8,000 – 10,000 cfs | 3,600 cfs / day |
| below 8,000 cfs | 1,800 cfs / day |
| **If the discharge below Columbia Falls is:** | **Ramping DOWN may not exceed:** |
| greater than 12,000 cfs | 5,000 cfs /day |
| 8,000 – 12,000 cfs | 2,000 cfs / day |
| 6,000 – 8,000 cfs | 1,000 cfs / day |
| below 6,000 cfs | 600 cfs / day |

**Table 6. Flathead River Ramping Below Kerr Dam at U.S. Geological Survey gage 12372000**

| If the required release from Flathead Lake is: | Ramping may not exceed: |
|---|---|
| greater than 40,000 cfs | 10,000 cfs / day |
| 20,000 – 40,000 cfs | 5,000 cfs / day |
| 10,000 – 20,000 cfs | 2,500 cfs / day |
| 5,000 – 10,000 cfs | 1,000 cfs / day |
| below 5,000 cfs | 500 cfs /day |

## Table 5: Minimum Flathead River Flows Below Kerr Dam (U.S. Geological Survey gage 12372000)

| Flathead River Mainstem Minimum Flow Daily Values As Measured at USGS Gage #12372000 Below Kerr Dam | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Month | | | | | | | | | | | |
| Da | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec |
| 1 | 3200 | 3200 | 3200 | 3200 | 5510 | 12700 | 12280 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 2 | 3200 | 3200 | 3200 | 3200 | 6020 | 12700 | 11860 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 3 | 3200 | 3200 | 3200 | 3200 | 6530 | 12700 | 11440 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 4 | 3200 | 3200 | 3200 | 3200 | 7040 | 12700 | 11020 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 5 | 3200 | 3200 | 3200 | 3200 | 7550 | 12700 | 10600 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 6 | 3200 | 3200 | 3200 | 3200 | 8060 | 12700 | 10180 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 7 | 3200 | 3200 | 3200 | 3200 | 8570 | 12700 | 9760 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 8 | 3200 | 3200 | 3200 | 3200 | 9080 | 12700 | 9340 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 9 | 3200 | 3200 | 3200 | 3200 | 9590 | 12700 | 8920 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 10 | 3200 | 3200 | 3200 | 3200 | 10100 | 12700 | 8500 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 11 | 3200 | 3200 | 3200 | 3200 | 10610 | 12700 | 8080 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 12 | 3200 | 3200 | 3200 | 3200 | 11120 | 12700 | 7660 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 13 | 3200 | 3200 | 3200 | 3200 | 11630 | 12700 | 7240 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 14 | 3200 | 3200 | 3200 | 3200 | 12140 | 12700 | 6820 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 15 | 3200 | 3200 | 3200 | 3200 | 12650 | 12700 | 6400 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 16 | 3200 | 3200 | 3200 | 3320 | 12700 | 12700 | 6200 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 17 | 3200 | 3200 | 3200 | 3440 | 12700 | 12700 | 6000 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 18 | 3200 | 3200 | 3200 | 3560 | 12700 | 12700 | 5800 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 19 | 3200 | 3200 | 3200 | 3680 | 12700 | 12700 | 5600 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 20 | 3200 | 3200 | 3200 | 3800 | 12700 | 12700 | 5400 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 21 | 3200 | 3200 | 3200 | 3920 | 12700 | 12700 | 5200 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 22 | 3200 | 3200 | 3200 | 4040 | 12700 | 12700 | 5000 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 23 | 3200 | 3200 | 3200 | 4160 | 12700 | 12700 | 4800 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 24 | 3200 | 3200 | 3200 | 4280 | 12700 | 12700 | 4600 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 25 | 3200 | 3200 | 3200 | 4400 | 12700 | 12700 | 4400 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 26 | 3200 | 3200 | 3200 | 4520 | 12700 | 12700 | 4200 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 27 | 3200 | 3200 | 3200 | 4640 | 12700 | 12700 | 4000 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 28 | 3200 | 3200 | 3200 | 4760 | 12700 | 12700 | 3800 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 29 | 3200 | 3200 | 3200 | 4880 | 12700 | 12700 | 3600 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 30 | 3200 | | 3200 | 5000 | 12700 | 12700 | 3400 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 31 | 3200 | | 3200 | | 12700 | 12700 | 3200 | 3200 | | 3200 | | 3200 |

# MINUTES

## MONTANA SENATE
## 64th LEGISLATURE - REGULAR SESSION

## COMMITTEE ON FINANCE AND CLAIMS

**Call to Order:** Chair Llew Jones, on February 24, 2015 at 8:00 AM, in Room 317 Capitol

## ROLL CALL

**Members Present:**

Sen. Llew Jones, Chair (R)
Sen. Mark Blasdel (R)
Sen. John Brenden (R)
Sen. Mary Caferro (D)
Sen. Bradley Hamlett (D)
Sen. Kris Hansen (R)
Sen. David Howard (R)
Sen. Jim Keane (D)
Sen. Frederick (Eric) Moore (R)
Sen. Mike Phillips (D)
Sen. Rick Ripley (R)
Sen. Matthew M. Rosendale Sr (R)
Sen. Jon C. Sesso (D)
Sen. Cary Smith (R)
Sen. Janna Taylor (R)
Sen. Roger Webb (R)
Sen. Jonathan Windy Boy (D)
Sen. Cynthia Wolken (D)

**Members Excused:** Sen. Bob Keenan, Vice Chair (R)

**Members Absent:** None

**Staff Present:** Prudence Gildroy, Committee Secretary
Julie Johnson, Legislative Branch
Jon Moe, Legislative Branch

**Audio Committees:** These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

**Committee Business Summary:**

Hearing & Date Posted: SB 380, 2/23/2015; SB 298, 2/23/2015; SB 262, 2/23/2015

Executive Action: SB 260 Do Pass; SB 12 Be Tabled; SB 376 Do Pass; SB 298 Do Pass as Amended; SB 262 Be Tabled

## HEARING ON SB 380

**Opening Statement by Sponsor**:

00:02:31 Sen. Cliff Larsen (D), SD 47, opened the hearing on SB 380, Increase coal tax trust fund money available for MT veteran home loans.

**Proponents' Testimony**:

00:07:45 Jim Higgins, Montana National Guard and Enlisted Association; Veterans of Foreign Wars (VFW)
00:09:17 Steve Turkiewicz, Montana Bankers Association (MBA)

**Opponents' Testimony**: None

**Informational Testimony**:

00:10:05 Bruce Brensdal, Montana Board of Housing (MBH)

**Questions from Committee Members and Responses**:

00:10:37 Sen. Phillips
00:10:52 Mr. Brensdal, MBH
00:11:15 Sen. Hamlett
00:11:24 Mr. Brensdal
00:11:51 Sen. Hansen
00:12:22 Mr. Brensdal
00:12:59 Sen. Hansen
00:13: 05 Mr. Brensdal
00:13:38 Sen. Windy Boy
00:14:03 Mr. Brensdal
00:14:19 Sen. Windy Boy
00:14:44 Mr. Brensdal
00:15:07 Sen. Hamlett
00:15:34 Mr. Brensdal
00:15:43 Sen. Brenden
00:15:55 Mr. Brensdal
00:16:55 Sen. Brenden
00:17:01 Mr. Brensdal
00:17:11 Sen. Brenden
00:17:27 Sen. Windy Boy
00:17:52 Chair Jones
00:17:59 Sen. Hamlett
00:18:07 Mr. Brensdal
00:18:15 Chair Jones
00:18:36 Mr. Brensdal

00:19:05 Chair Jones

00:19:37 Mr. Brensdal

**Closing by Sponsor**:

00:20:13 Sen. Larsen

## HEARING ON SB 298

**Opening Statement by Sponsor**:

00:24:00 Sen. Jennifer Fielder (R), SD 7, opened the hearing on SB 298, Enforce provisions of the enabling act regarding sale of public lands.

**Proponents' Testimony**: None

**Opponents' Testimony**: None

**Informational Testimony**:

00:27:09 Jon Bennion, Department of Justice (DOJ)

**Questions from Committee Members and Responses**:

00:28:13 Sen. Phillips
00:28:38 Mr. Bennion, DOJ
00:29:30 Sen. Phillips
00:29:51 Mr. Bennion
00:30:38 Sen. Keane
00:31:02 Mr. Bennion
00:31:37 Sen. Keane
00:31:48 Mr. Bennion
00:32:02 Sen. Windy Boy
00:32:23 Sen. Fielder
00:32:49 Jon Moe, Legislative Fiscal Division (LFD)
00:33:03 Sen. Fielder
00:33:25 Sen. Sesso
00:34:07 Sen. Fielder
00:35:10 Chair Jones
00:35:23 Sen. Fielder

**Closing by Sponsor**:

00:35:38 Sen. Fielder

## HEARING ON SB 262

**Opening Statement by Sponsor**:

00:38:16 Sen. Chas Vincent (R), SD 1, opened the hearing on SB 262, Implement CSKT water rights settlement.

**Proponents' Testimony**:

00:41:28 John Tubbs, director, Department of Natural Resources and Conservation (DNRC)
00:44:19 Mark Baker, Confederated Salish and Kootenai Tribes (CSKT)

**Opponents' Testimony**:

00:44:58 Abigail St. Lawrence, Flathead Joint Board of Control (FJBC)
00:45:28 Jon Metropoulos, representing irrigators

**Informational Testimony**: None

**Questions from Committee Members and Responses**:

00:50:05 Sen. Moore
00:50:40 Sen. Vincent
00:52:48 Sen. Brenden
00:53:45 Sen. Vincent
00:54:48 Sen. Brenden
00:55:00 Sen. Vincent
00:55:47 Sen. Phillips
00:56:44 Mr. Tubbs, DNRC
00:57:09 Sen. Phillips
00:57:19 Mr. Tubbs
00:59:13 Sen. Phillips
00:59:34 Mr. Tubbs
00:59:47 Sen. Ripley
01:00:18 Mr. Tubbs
01:03:55 Sen. Ripley
01:04:08 Mr. Tubbs
01:04:20 Sen. Rosendale
01:05:04 Sen. Vincent
01:07:13 Sen. Rosendale
01:07:33 Sen. Vincent
01:07:44 Sen. Windy Boy
01:08:10 Mr. Tubbs
01:10:12 Sen. Windy Boy
01:10:49 Mr. Tubbs
01:11:30 Sen. Brenden
01:12:46 Chair Jones
01:13:07 Sen. Windy Boy

01:13:23 Chair Jones
01:13:34 Sen. Vincent
01:14:44 Chair Jones
01:14:50 Sen. Phillips
01:15:25 Mr. Tubbs
01:16:14 Sen. Howard
01:16:55 Mr. Metropoulos, irrigators
01:17:49 Sen. Howard
01:18:07 Mr. Metropoulos
01:18:26 Sen. Keane
01:18:36 Mr. Tubbs
01:23:51 Sen. Keane
01:24:05 Mr. Tubbs
01:24:36 Sen. Webb
01:25:04 Mr. Tubbs

**Closing by Sponsor**:

01:25:18 Sen. Vincent

01:30:51 Chair Jones

01:31:27 Recess
01:53:01 Reconvene

## EXECUTIVE ACTION ON SB 260

01:53:34 **Motion:** Sen. Ripley moved that **SB 260 DO PASS**.

**Discussion:**

01:53:58 Chair Jones
01:54:09 Sen. Sesso
01:55:50 Sen. Windy Boy

01:56:30 **Vote:** Motion carried 12-7 by roll call vote with Sen. Caferro, Sen. Hamlett, Sen. Keane, Sen. Phillips, Sen. Sesso, Sen. Windy Boy and Sen. Wolken voting no. Sen. Keenan voted by proxy.

## EXECUTIVE ACTION ON SB 12

01:57:45 **Motion:** Sen. Keane moved that **SB 12 DO PASS**.

01:58:11 **Motion:** Sen. F. Moore moved that **SB 12 BE AMENDED**.
**EXHIBIT(fcs42a01)**

01:58:47 Sen. Windy Boy
01:59:10 Jon Moe, Legislative Fiscal Division (LFD)
01:59:37 Sen. Keane

01:59:59 **Vote:** Motion carried 18-0 by voice vote. Sen. Keenan was excused.

02:00:13 **Motion/Vote:** Sen. Keane moved that **SB 12 DO PASS AS AMENDED**. Motion failed 9-10 by roll call vote with Sen. Caferro, Sen. Hamlett, Sen. L. Jones, Sen. Keane, Sen. F. Moore, Sen. Phillips, Sen. Sesso, Sen. Windy Boy and Sen. Wolken voting aye. Sen. Keenan voted by proxy.

02:01:20 **Motion/Vote:** Sen. Ripley moved that **SB 12 BE TABLED**. Motion carried 11-8 by roll call vote with Sen. Caferro, Sen. Hamlett, Sen. Keane, Sen. Phillips, Sen. Ripley, Sen. Sesso, Sen. Windy Boy and Sen. Wolken voting no. Sen. Keenan voted by proxy.

## EXECUTIVE ACTION ON SB 376

02:02:54 **Motion:** Sen. Brenden moved that **SB 376 DO PASS**.

**Motion/Vote**: Sen. Brenden moved that **SB 376 BE AMENDED**. Motion carried 18-0 by voice vote of those present and voting.
**EXHIBIT(fcs42a02)**

02:04:40 **Motion/Vote:** Sen. Brenden moved that **SB 376 DO PASS AS AMENDED**. Motion carried 14-5 by roll call vote with Sen. Caferro, Sen. Phillips, Sen. Sesso, Sen. Windy Boy and Sen. Wolken voting no. Sen. Keenan voted by proxy.

## EXECUTIVE ACTION ON SB 298

02:06:03 **Motion:** Sen. Hansen moved that **SB 298 DO PASS**.

02:06:55 **Motion:** Sen. Rosendale moved that **SB 298 BE AMENDED**.
**EXHIBIT(fcs42a03)**

02:07:19 **Vote:** Motion carried 18-0 by voice vote. Sen. Keenan was excused.

02:07:29 **Motion/Vote:** Sen. Hansen moved that **SB 298 DO PASS AS AMENDED**. Motion carried 13-6 by roll call vote with Sen. Caferro, Sen. Howard, Sen. Phillips, Sen. Sesso, Sen. Windy Boy and Sen. Wolken voting no. Sen. Keane voted by proxy.

## EXECUTIVE ACTION ON SB 262

02:09:30 **Motion:** Sen. Keane moved that **SB 262 DO PASS**.

02:09:51 **Motion:** Sen. Taylor moved that **SB 262 BE AMENDED**.
**EXHIBIT(fcs42a04)**

**Discussion:**

02:11:45 Sen. Windy Boy
02:12:17 Sen. Phillips

02:12:27 Sen. Taylor
02:12:51 Sen. Keane
02:13:00 Sen. Brenden
02:13:29 Sen. Hamlett
02:14:04 Sen. Taylor

02:14:16 **Vote:** Motion carried 14-5 by roll call vote with Sen. Caferro, Sen. Hamlett, Sen. Keane, Sen. Phillips and Sen. Sesso voting no. Sen. Keenan voted by proxy.

**Discussion:**

02:15:13 Sen. Ripley
02:15:58 Chair Jones
02:16:24 Sen. Keane
02:16:34 Chair Jones
02:16:48 Sen. Moore
02:17:03 Sen. Keane
02:17:20 Sen. Phillips
02:17:49 Sen. Hamlett
02:18:06 Sen. Taylor
02:18:58 Jon Moe, Legislative Fiscal Division (LFD)
02:19:35 Sen. Phillips
02:19:48 Sen. Rosendale
02:20:48 Chair Jones
02:20:59 Sen. Moore
02:21:10 Chair Jones
02:21:27 Sen. Rosendale
02:21:31 Sen. Windy Boy
02:21:45 Chair Jones
02:22:25 Sen. Vincent (without objection)
02:23:22 Chair Jones
02:23:36 Sen. Brenden
02:24:12 Sen. Vincent
02:24:27 Sen. Ripley
02:25:01 Sen. Taylor

02:25:33 **Motion:** Sen. Taylor moved that **SB 262 BE AMENDED**.
**EXHIBIT(fcs42a05)**

**Discussion:**

02:26:00 Sen. Keane
02:26:14 Sen. Windy Boy
02:26:28 Sen. Hamlett
02:26:38 Sen. Phillips
02:27:23 Sen. Ripley
02:28:09 Chair Jones
02:28:32 Julie Johnson, Legislative Fiscal Division (LFD)
02:28:48 Chair Jones

02:29:03 **Vote:** Motion carried 10-9 by roll call vote with Sen. Caferro, Sen. Hamlett, Sen. L. Jones, Sen. Keane, Sen. Phillips, Sen. Ripley, Sen. Sesso, Sen. Windy Boy and Sen. Wolken voting no. Sen. Keenan voted by proxy.

02:30:03 **Motion:** Sen. Keane moved that **SB 262 DO PASS AS AMENDED**.

**Discussion:**

02:30:31 Sen. Vincent
02:31:20 Sen. Keane
02:31:37 Sen. Hamlett

02:31:52 **Motion/Vote:** Sen. Ripley moved a **SUBSTITUTE MOTION** that **SB 262 BE TABLED**. Motion carried 17-2 by roll call vote with Sen. Taylor and Sen. Windy Boy voting no. Sen. Keenan voted by proxy.

02:33:16 Chair Jones
02:33:22 Sen. Rosendale

## ADJOURNMENT

Adjournment: 10:33 a.m.

_____
Prudence Gildroy, Secretary

pg

Additional Documents:

**EXHIBIT(fcs42aad.pdf)**

SENATE FINANCE & CLAIMS
Exhibit No. 24
Date 2-24-15
Bill No. SB262

Amendments to Senate Bill No. 262
2nd Reading Copy

Requested by Senator Janna Taylor

For the Senate Finance and Claims Committee

Prepared by Julie Johnson
February 24, 2015 (6:58am)

1. Title, page 1, line 9.
**Following:** "PERMITTING;"
**Insert:** "REQUIRING INTERIM REPORTING;"

2. Page 126, line 28.
**Following:** line 27
**Insert:** "NEW SECTION. **Section 3. Interim reporting.** By June 1 of each year, the department of natural resources and conservation shall present a report on all activities related to the implementation of the compact to the legislative finance committee. The report must contain an itemized list of expenditures made in the implementation of the compact within the last 12 months or since the last report was submitted, whichever is longer."
**Renumber:** subsequent sections

- END -

SENATE FINANCE & CLAIMS
Exhibit No. 5
Date 2-24-15
Bill No. SB 262

Amendments to Senate Bill No. 262
2nd Reading Copy

Requested by Senator Janna Taylor

For the Senate Finance and Claims Committee

Prepared by Julie Johnson
February 24, 2015 (6:59am)

1. Title, page 1, line 9.
**Following:** "PERMITTING;"
**Insert:** "REQUIRING AN ANNUAL AUDIT OF EXPENSES INCURRED DUE TO IMPLEMENTATION OF THE COMPACT;"

2. Page 126, line 28.
**Following:** line 27
**Insert:** "NEW SECTION. **Section 3. Annual audit of expenditures related to implementation of compact.** The department of natural resources and conservation is required to have completed an annual audit of all expenses incurred by the state due to the implementation of the compact. The audit must be provided to the state-tribal relations committee within 30 days of its completion."
**Renumber:** subsequent sections

- END -

# Montana State Legislature

## 2015 SESSION

## ADDITIONAL DOCUMENTS

**Business Page**

**[Signed by Chairman]**

**Roll Call**

**Standing Committee Reports**

**Tabled Bills**

**Fiscal Reports**

**Rolls Call Votes**

**Proxy Forms**

**Visitor Registrations**

***Any other documents, which were submitted after the committee hearing has ended and/or was submitted late [within 48 hours], regarding information in the committee hearing.**

***Witness Statements that were not presented as exhibits.**

**Montana Historical Society Archives**
225 N. Roberts
Helena MT 59620-1201
2015 Legislative
E-Document Specialist Susie Hamilton

**BUSINESS REPORT**

**MONTANA SENATE**
**64th LEGISLATURE - REGULAR SESSION**

**SENATE FINANCE AND CLAIMS COMMITTEE**

**Date:** Tuesday, February 24, 2015
**Place:** Capitol

**Time:** 9:00 A.M.
**Room:** 317

**BILLS and RESOLUTIONS HEARD:**

SB 262 - Implement CSKT water rights settlement - Sen. Chas Vincent
SB 298 - Enforce provisions of the enabling act regarding sale of public lands - Sen. Jennifer Fielder
SB 380 - Increase coal tax trust fund money available for MT veteran home loans - Sen. Cliff Larsen

**EXECUTIVE ACTION TAKEN:**

SB 260 Do Pass
SB 12 Be Tabled
SB 376 Do Pass
SB 298 Do Pass as Amended
SB 262 Be Tabled

**Comments:**

SEN. Llew Jones, Chair

# MONTANA STATE SENATE
# ROLL CALL
## FINANCE AND CLAIMS COMMITTEE

DATE: February 24, 2015

| NAME | PRESENT | ABSENT/ EXCUSED |
|---|---|---|
| Chairman Jones | X | |
| Vice Chair Keenan | | X |
| Senator Blasdel | X | |
| Senator Brenden | X | |
| Senator Caferro | X | |
| Senator Hamlett | X | |
| Senator Hansen | X | |
| Senator Howard | X | |
| Senator Keane | X | |
| Senator Moore | X | |
| Sen. Phillips | X | |
| Senator Ripley | X | |
| Senator Rosendale | X | |
| Senator Sesso | X | |
| Senator Smith | X | |
| Senator Taylor | X | |
| Senator Webb | X | |
| Senator Windy Boy | X | |
| Senator Wolken | X | |

## SENATE STANDING COMMITTEE REPORT

**February 24, 2015**


Madame President:

We, your committee on **Finance and Claims** report that **Senate Bill 260** (first reading copy -- white) **do pass**.

Signed: _____
*Senator Llew Jones, Chair*

- END -

**Committee Vote:**
**Yes 12, No 7**
Fiscal Note Required X

SB0260002SC.spt

## SENATE STANDING COMMITTEE REPORT

**February 24, 2015**


Madame President:

We, your committee on **Finance and Claims** report that **Senate Bill 376** (first reading copy -- white) **do pass as amended**.

Signed: _____
*Senator Llew Jones, Chair*

**And, that such amendments read:**

1. Page 2, line 7.
**Strike:** "An agency"
**Insert:** "Except for a unit of the university system or as provided in applicable regulations, guidelines, or grant rules governing the funds, an agency:
(a)"

2. Page 2, line 8.
**Following:** "maintenance"
**Strike:** ". An agency"
**Insert:** ";
(b)"

- END -

**Committee Vote:**
**Yes 14, No 5**
Fiscal Note Required X

SB0376001SC.spt

## SENATE STANDING COMMITTEE REPORT



Madame President:

We, your committee on **Finance and Claims** report that **Senate Bill 298** (first reading copy -- white) **do pass as amended**.

Signed: _____
*Senator Llew Jones, Chair*

**And, that such amendments read:**

1. Page 1, line 19.
**Following:** "FEASIBLE"
**Insert:** "using available state resources"

- END -

**Committee Vote:**
**Yes 13, No 6**
Fiscal Note Required X

SB0298002SC.spt

COMMITTEE FILE COPY

# BILL TABLED NOTICE

**SENATE FINANCE AND CLAIMS COMMITTEE**

The **SENATE FINANCE AND CLAIMS COMMITTEE** TABLED

**SB 12 - Provide ANB funding for 19 year olds - Sen. Mary Sheehy Moe**
**SB 262 - Implement CSKT water rights settlement - Sen. Chas Vincent**

by motion, on **Tuesday, February 24, 2015** (PLEASE USE THIS ACTION DATE IN LAWS BILL STATUS).

P. Gildroy
(For the Committee)

(For the Secretary of the Senate)

11:30 / 2/24
(Time) (Date)

February 24, 2015 (11:24am) Prudence Gildroy, Secretary Phone: 444-4816

# MONTANA STATE SENATE
# ROLL CALL VOTE
# FINANCE AND CLAIMS
# COMMITTEE

**DATE:** 2-24-15 **, 2015** **BILL #** SB 260 **VOTE** _____

**MOTION:** DO PASS

| NAME | AYE | NO | PROXY | EXCUSED |
|---|---|---|---|---|
| VICE CHAIR KEENAN | X | | X | |
| SENATOR KEANE | | X | | |
| SENATOR RIPLEY | X | | | |
| SENATOR HANSEN | X | | | |
| SENATOR CAFERRO | | X | | |
| SENATOR BLASDEL | X | | | |
| SENATOR SMITH | X | | | |
| SENATOR WEBB | X | | | |
| SENATOR WINDY BOY | | X | | |
| SENATOR WOLKEN | | X | | |
| SENATOR HOWARD | X | | | |
| SENATOR BRENDEN | X | | | |
| SENATOR HAMLETT | | X | | |
| SENATOR MOORE | X | | | |
| SENATOR PHILLIPS | | X | | |
| SENATOR TAYLOR | X | | | |
| SENATOR SESSO | | X | | |
| SENATOR ROSENDALE | X | | | |
| CHAIRMAN JONES | X | | | |

# MONTANA STATE SENATE
# ROLL CALL VOTE
# FINANCE AND CLAIMS
# COMMITTEE

**DATE:** 2-24, **2015** **BILL #** SB12 **VOTE** 9-10 ~~8-11~~

**MOTION:** _____

| NAME | AYE | NO | PROXY | EXCUSED |
|---|---|---|---|---|
| VICE CHAIR KEENAN | | X | X | |
| SENATOR KEANE | X | | | |
| SENATOR RIPLEY | | X | | |
| SENATOR HANSEN | | X | | |
| SENATOR CAFERRO | X | | | |
| SENATOR BLASDEL | | X | | |
| SENATOR SMITH | | X | | |
| SENATOR WEBB | | X | | |
| SENATOR WINDY BOY | X | | | |
| SENATOR WOLKEN | X | | | |
| SENATOR HOWARD | | X | | |
| SENATOR BRENDEN | | X | | |
| SENATOR HAMLETT | X | | | |
| SENATOR MOORE | X | ~~X~~ | | |
| SENATOR PHILLIPS | X | | | |
| SENATOR TAYLOR | | X | | |
| SENATOR SESSO | X | | | |
| SENATOR ROSENDALE | | X | | |
| CHAIRMAN JONES | X | | | |

# MONTANA STATE SENATE
# ROLL CALL VOTE
# FINANCE AND CLAIMS
# COMMITTEE

**DATE:** 2-24-15 **, 2015** **BILL #** SB12 **VOTE** 11-8

**MOTION:** table

| NAME | AYE | NO | PROXY | EXCUSED |
|---|---|---|---|---|
| VICE CHAIR KEENAN | X | | X | |
| SENATOR KEANE | | X | | |
| SENATOR RIPLEY | ~~X~~ | X | | |
| SENATOR HANSEN | X | | | |
| SENATOR CAFERRO | | X | | |
| SENATOR BLASDEL | X | | | |
| SENATOR SMITH | X | | | |
| SENATOR WEBB | X | | | |
| SENATOR WINDY BOY | | X | | |
| SENATOR WOLKEN | | X | | |
| SENATOR HOWARD | X | | | |
| SENATOR BRENDEN | X | | | |
| SENATOR HAMLETT | | X | | |
| SENATOR MOORE | X | | | |
| SENATOR PHILLIPS | | X | | |
| SENATOR TAYLOR | X | | | |
| SENATOR SESSO | | X | | |
| SENATOR ROSENDALE | X | | | |
| CHAIRMAN JONES | X | | | |

# MONTANA STATE SENATE
# ROLL CALL VOTE
# FINANCE AND CLAIMS
# COMMITTEE

**DATE:** 2-24 **, 2015** **BILL #** SB376 **VOTE** 14-5

**MOTION:** DP AS AMEND

| NAME | AYE | NO | PROXY | EXCUSED |
|---|---|---|---|---|
| VICE CHAIR KEENAN | X | | X | |
| SENATOR KEANE | X | | | |
| SENATOR RIPLEY | X | | | |
| SENATOR HANSEN | X | | | |
| SENATOR CAFERRO | | X | | |
| SENATOR BLASDEL | X | | | |
| SENATOR SMITH | X | | | |
| SENATOR WEBB | X | | | |
| SENATOR WINDY BOY | | X | | |
| SENATOR WOLKEN | | X | | |
| SENATOR HOWARD | X | | | |
| SENATOR BRENDEN | X | | | |
| SENATOR HAMLETT | X | | | |
| SENATOR MOORE | X | | | |
| SENATOR PHILLIPS | | X | | |
| SENATOR TAYLOR | X | | | |
| SENATOR SESSO | | X | | |
| SENATOR ROSENDALE | X | | | |
| CHAIRMAN JONES | X | | | |

# MONTANA STATE SENATE
# ROLL CALL VOTE
# FINANCE AND CLAIMS
# COMMITTEE

**DATE:** 2-24-15 **, 2015** **BILL #** SB298 **VOTE** 13-6

**MOTION:** DO PASS AS AMENDED

| NAME | AYE | NO | PROXY | EXCUSED |
|---|---|---|---|---|
| VICE CHAIR KEENAN | X | | X | |
| SENATOR KEANE | X | | | |
| SENATOR RIPLEY | X | | | |
| SENATOR HANSEN | X | | | |
| SENATOR CAFERRO | | X | | |
| SENATOR BLASDEL | X | | | |
| SENATOR SMITH | X | | | |
| SENATOR WEBB | X | | | |
| SENATOR WINDY BOY | | X | | |
| SENATOR WOLKEN | | X | | |
| SENATOR HOWARD | | X | | |
| SENATOR BRENDEN | X | | | |
| SENATOR HAMLETT | X | | | |
| SENATOR MOORE | X | | | |
| SENATOR PHILLIPS | | X | | |
| SENATOR TAYLOR | X | | | |
| SENATOR SESSO | | X | | |
| SENATOR ROSENDALE | X | | | |
| CHAIRMAN JONES | X | | | |

# MONTANA STATE SENATE
# ROLL CALL VOTE
# FINANCE AND CLAIMS
# COMMITTEE

**DATE:** 2-24, **2015** **BILL #** SB262 **VOTE** 14-3

**MOTION:** AMEND 26202.9jj

| NAME | AYE | NO | PROXY | EXCUSED |
|---|---|---|---|---|
| VICE CHAIR KEENAN | X | | X | |
| SENATOR KEANE | | X | | |
| SENATOR RIPLEY | X | | | |
| SENATOR HANSEN | X | | | |
| SENATOR CAFERRO | | X | | |
| SENATOR BLASDEL | X | | | |
| SENATOR SMITH | X | | | |
| SENATOR WEBB | X | | | |
| SENATOR WINDY BOY | X | | | |
| SENATOR WOLKEN | X | | | |
| SENATOR HOWARD | X | | | |
| SENATOR BRENDEN | X | | | |
| SENATOR HAMLETT | | X | | |
| SENATOR MOORE | X | | | |
| SENATOR PHILLIPS | | X | | |
| SENATOR TAYLOR | X | | | |
| SENATOR SESSO | | X | | |
| SENATOR ROSENDALE | X | | | |
| CHAIRMAN JONES | X | | | |

# MONTANA STATE SENATE
# ROLL CALL VOTE
# FINANCE AND CLAIMS
# COMMITTEE

**DATE:** 2-24 **, 2015** **BILL #** SB262 **VOTE** 10-9

**MOTION:** amend 26204-2.9jj

| NAME | AYE | NO | PROXY | EXCUSED |
|---|---|---|---|---|
| VICE CHAIR KEENAN | X | | X | |
| SENATOR KEANE | | X | | |
| SENATOR RIPLEY | | X | | |
| SENATOR HANSEN | X | | | |
| SENATOR CAFERRO | | X | | |
| SENATOR BLASDEL | X | | | |
| SENATOR SMITH | X | | | |
| SENATOR WEBB | X | | | |
| SENATOR WINDY BOY | | X | | |
| SENATOR WOLKEN | | X | | |
| SENATOR HOWARD | X | | | |
| SENATOR BRENDEN | X | | | |
| SENATOR HAMLETT | | X | | |
| SENATOR MOORE | X | | | |
| SENATOR PHILLIPS | | X | | |
| SENATOR TAYLOR | X | | | |
| SENATOR SESSO | | X | | |
| SENATOR ROSENDALE | X | | | |
| CHAIRMAN JONES | | X | | |

# MONTANA STATE SENATE
# ROLL CALL VOTE
# FINANCE AND CLAIMS
# COMMITTEE

**DATE:** 2-24, **2015** **BILL #** SB262 **VOTE** 17-2

**MOTION:** table

| NAME | AYE | NO | PROXY | EXCUSED |
|---|---|---|---|---|
| VICE CHAIR KEENAN | X | | X | |
| SENATOR KEANE | X | | | |
| SENATOR RIPLEY | X | | | |
| SENATOR HANSEN | X | | | |
| SENATOR CAFERRO | X | | | |
| SENATOR BLASDEL | X | | | |
| SENATOR SMITH | X | | | |
| SENATOR WEBB | X | | | |
| SENATOR WINDY BOY | | X | | |
| SENATOR WOLKEN | X | | | |
| SENATOR HOWARD | X | | | |
| SENATOR BRENDEN | X | | | |
| SENATOR HAMLETT | X | | | |
| SENATOR MOORE | X | | | |
| SENATOR PHILLIPS | X | | | |
| SENATOR TAYLOR | | X | | |
| SENATOR SESSO | X | | | |
| SENATOR ROSENDALE | X | | | |
| CHAIRMAN JONES | X | | | |

# SENATE PROXY

I, Senator Bob Keenan, hereby authorize Senator Kristin Hansen to vote my proxy before the Senate **Finance & Claims Committee** meeting held on _____, 2015.

Bob Keenan
Senator Signature

2-24-15
Date

Said authorization is as follows: *(mark only one)*

- ☐ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☐ Votes only as directed below.

| | Bill No./Amendment No. | Aye | No |
|---|---|---|---|
| | [redacted] | | |
| ✓ | SB 298 | X | |
| ✓ | SB 262 - to table | X | [redacted] |
| ✓ | SB 12 | | X |
| ✓ | SB 376 | X | |
| ✓ | SB 260 | X | |
| | [redacted] | | [redacted] |
| ✓ | [redacted] SB001212.APM | X | |
| ✓ | SB037601.ASB | X | |
| ✓ | SB029801.AJM | X | |
| ✓ | SB026202.AJJ | X | |
| ✓ | SB026204-2.AJJ | X | |
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# MONTANA STATE SENATE
## Visitors Register
## SENATE FINANCE AND CLAIMS COMMITTEE

**Tuesday, February 24, 2015**

**SB 380 - Increase coal tax trust fund money available for MT veteran home loans**

Sponsor: **Sen. Cliff Larsen**

**PLEASE PRINT**

| Name | Representing | Support | Oppose | Info |
|---|---|---|---|---|
| Jim Higgins | MT Natl Guard Assoc | ✓ | | |
| Jim Higgins | American Legion | ✓ | | |
| Steve Turkiewicz | MT Bankers | ✓ | | |
| JACK WALSH | SELF/HBIA/MBIA | ✓ | | |

**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**

# MONTANA STATE SENATE
## Visitors Register
## SENATE FINANCE AND CLAIMS COMMITTEE

**Tuesday, February 24, 2015**

**SB 298 - Enforce provisions of the enabling act regarding sale of public lands**

Sponsor: **Sen. Jennifer Fielder**

**PLEASE PRINT**

| Name | Representing | Support | Oppose | Info |
|---|---|---|---|---|
| JON BENNION | DOJ | | | ✓ |
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**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**

# MONTANA STATE SENATE
## Visitors Register
## SENATE FINANCE AND CLAIMS COMMITTEE

**Tuesday, February 24, 2015**
**SB 262 - Implement CSKT water rights settlement**
Sponsor: **Sen. Chas Vincent**

**PLEASE PRINT**

| Name | Representing | Support | Oppose | Info |
|---|---|---|---|---|
| John Carter | Salish + Kootenai Tribes | X | | |
| Rhonda Swaney | CSKT | X | | |
| Jon Bennion | DOJ | X | | |
| Kristen Lee Evans | AGAI, SRWRC | X | | |
| Hertha Lund | Common Sense Citizens for CSKT Compact | X | | |
| Jay Bodner | MSGA / MCW | + | | |
| Shane Morigeau | CSKT | + | | |
| Patty Stevens | CSKT | + | | |
| Mike Murphy | MWRA | X | | |
| Nicole Rolf | MFBF | X | | |
| Jacob Cargill | MT Farmers Union | X | | |
| Mark Ageneau | Montana TU | X | | |
| Holly Franz | Mountain Water Co / Billings & Chamber of Commerce | X | | |
| RON TRAHAN | CSKT | X | | |
| James Matt | CSKT | X | | |
| Abigail St. Lawrence | FJBC | | X | |
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**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**